

AMERICAN FEDERALISM AND PARTISAN RESISTANCE IN AN AGE OF  
POLARIZATION

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Joshua Len Meyer-Gutbrod

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# AMERICAN FEDERALISM AND PARTISAN RESISTANCE IN AN AGE OF POLARIZATION

Joshua Len Meyer-Gutbrod, Ph.D.

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The increase in partisan polarization at the national level has corresponded to an increase in partisan resistance and a decline in the ability of the federal government to respond to public concerns with effective policy. While literature has shown that state politics has polarized in tandem with the national political parties, there are abundant examples of recent bi-partisan cooperation between national and state governments. This dissertation explores the conditions under which American federalism might offer a mechanism for mitigating polarization by producing these opportunities for bi-partisan policy implementation.

I argue that conflict between national and state governments is a product of the electoral motivations of state politicians, as they are structured by two interrelated political institutions. First, national political parties produce a national partisan agenda to which state politicians are held electorally accountable. Alongside their identification with a political party, state politicians must also contend with distinct local interests organized under American federalism and represented within state governments. I argue that, when the electoral incentives associated with American federalism and political parties encourage conflicting responses to federal policy, it

can cross-pressure state officials resulting in negotiation between state politicians and partisan rivals at the national level.

By examining the history of federalism and historical trends in decentralization of federal funding, I show that polarization has encouraged national political parties to produce more coercive policy and to increasingly decentralize policy implementation to state partisan allies. This increases the potential for conflict with moderate state partisan allies due to variation in local constituent pressures. Examining a new database of state legislative response to federal preemption law, I find that there is significant bi-partisan implementation during the recent period of high polarization, with conflicts between state and federal agents more regularly arising from variation in local policy preferences. In examining the highly polarized Affordable Care Act, I find that unique local constituent preferences encouraged state politicians to deviate from the agenda of national partisan allies. This effect was magnified when the state majority party risked loss of control of state institutions due to a strong competitive partisan environment within the state. These results suggest that the potential for state politicians to engage in bi-partisan policy implementation with the national rivals is a direct product of national polarization and can provide an avenue for policy compromise and continued effective governance.

## BIOGRAPHICAL SKETCH

Joshua Meyer-Gutbrod earned his Ph.D. in the Department of Government at Cornell University in the fall of 2018 with a specialization in American Politics. His research focuses on how partisan polarization has impacted state politics and altered the potential for conflicts between the state and federal governments over policy implementation. Raised in Leavenworth, KS, Dr. Meyer-Gutbrod earned his B.A. at the University of Notre Dame in 2008, with concentrations in Political Science and Philosophy. Before returning to school for his Ph.D., Dr. Meyer-Gutbrod worked with the Lucy Burns Institute on the development of Ballotpedia.org, a website dedicated to providing citizens with information about state politics and state and local elections. Following the completion of his Ph.D., Dr. Meyer-Gutbrod will research variation in state legislative campaign platforms at the University of California, Santa Barbara as a National Science Foundation Postdoctoral Fellow.

*To my wife, Erin, my best friend and my collaborator in our greatest accomplishment, our children.*

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particularly appreciate Isaac Kramnick's assistance and advice as my faculty mentor for my first independent course with the First Year Writing program and Dr. Brent McBride for providing a resource during my fifth year as I was teaching within the German Studies Department.

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Beyond the academic community, the friends I made while in Ithaca provided an amazing support structure as I advanced through my degree. During my first few years, Tim Reber, Elaina Shope, Veronica Prush, Nico Cosentino, Alex Ryckman Mellnik and Caitlin Cox provided the diversions I needed to get away from the grind of classwork and early dissertation work. After they left Ithaca, I found a new community, in part built around my own growing family after the birth of my children. In particular, I need to thank Maya Weltman-Fahs and Alessandro Farsi, Renee Petipas and Nabil Elrouby, Susan Whitehead and Abe Lee, and Christy and Yunus Kinkhabwala for providing support as both fellow parents and occasionally advise and

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## CHAPTER 1

### INTRODUCTION: POLARIZATION AND STATE RESPONSE TO FEDERAL EXPANSION

The 2010 Patient Protection and Affordable Care Act (ACA) was, arguably, the largest landmark piece of legislation passed during the Obama administration. The ACA expanded the federal government's role in health insurance regulation by placing increased restrictions on insurance plans and requiring individuals to purchase insurance or face a tax penalty. It was also one of the most polarizing pieces of legislation produced during the eight-year Obama administration. The law passed without a single Republican vote, reflecting the growing pattern of partisan resistance that is characteristic of the current period of polarized national politics (Lee 2016; Mann and Ornstein 2012; Sinclair 2014; Staff-NPR 2010). The polarization around the ACA extended beyond the original passage with frequent symbolic House floor votes to repeal the law and a concerted Republican campaign effort aimed at repeal, which was aided by support from conservative donors and media organizations (Berenson 2017; Erickson 2012; Millman 2014; Parker 2014; Riotta 2017; Rohrer 2015; Taylor 2014; R. Wilson 2015).

The national Republican Party's repeal effort spilled over into state politics, largely due to the ACA's reliance on state governments for implementation. Congressional Democrats needed to court party moderates in order to obtain the sixty votes necessary to overcome a filibuster. One of those moderates was Democratic Senator Ben Nelson (NE), who was opposed to the consolidation of federal control of a healthcare marketplace (Brown 2010). As a result, Congress permitted states the option of instituting their own Health Insurance Exchange or participating in the federal exchange. The law also attempted to coerce state governments into expanding Medicaid coverage to all individuals under 138% of the federal poverty level. However, the Supreme Court's ruling in *National Federation of Independent Businesses vs*

Sebelius permitted states the option to reject or negotiate the Medicaid expansion mandate (Nat. Fedn. of Indep. Business v. Sebelius 2012).

The latitude afforded states regarding the implementation of health insurance exchanges and the expansion of Medicaid produced significant variation in state cooperation and resistance with the Democratic Obama Administration. Sixteen states cooperated with the Obama administration by implementing state-based insurance exchanges (Kaiser Family Foundation 2013). The extensive funding available for Medicaid expansion proved to be especially enticing to state governments. During 2014, the first year of Medicaid expansion, twenty-nine states moved to participate in the federal policy. This expansion activity extended to Republican controlled states, including Ohio, Arizona, and New Mexico that had reached across the aisle to cooperate with the Democratic Obama Administration.

In many instances Republican state politicians adopted the attitude of the national party, advocating resistance and polarizing state politics around the issue. Among these was Republican-leaning Kentucky. Democratic Governor Steve Beshear was able to bypass the partisan divided state legislature in order to adopt the state's insurance exchange, Kynect. Kynect was heralded as a success story and was popular within the state in spite of the growing support for the Republican Party (Al-Faruque 2014; Wieczner 2013; Young 2014). The local popularity of Kynect complicated the 2014 Senate campaign of Republican Senate Majority Leader Mitch McConnell, who had joined other congressional Republicans in pushing for a repeal of the ACA. In a debate with opponent Alison Lundgren Grimes, McConnell hedged on the issue of Kynect, telling the crowds, "Kentucky Kynect is a website. It was paid for by a two-hundred-and-some-odd-million-dollar grant from the federal government. The website can continue but in my view the best interests of the country would be achieved by pulling out Obamacare root and branch"

(Taylor 2014). Governor Beshear would later point out the conflict in McConnell's statements, telling interviewers:

“ If Obamacare is repealed, there's not going to be any Kynect. First of all, if you repeal Obamacare, your folks with pre-existing conditions won't be able to get coverage. Kids won't be able to stay on their parents' policies until they're 26. Women will go back to having to pay more for the same insurance. There's all kinds of things the Affordable Care Act has done to change the landscape that will disappear and that's part of what Kynect is based on, all of those assumptions.[...] It'll be a total dismantlement of Kynect.” (Kliff 2014)

In spite of Kynect's popularity, Kentucky voters reelected McConnell by a sixteen-point margin. Not two years later, newly elected Governor Matt Bevin (R) would accomplish one of his core campaign promises by dismantling Kynect and shifting the state to the federal marketplace, resulting in a decline in insurance enrollment (Norris 2018; Phillips 2016; Yetter 2016).

While Kentucky polarized around the ACA, state-level Republican leadership in other states engaged in bi-partisan policy implementation with the Obama administration, in spite of national polarization. When the 2016 election handed McConnell and other congressional Republicans the power to repeal the law nationally, the presence of this bi-partisan engagement hindered repeal efforts in the Senate. While a repeal bill passed the House, McConnell was unable to obtain the support of fifty out of the fifty-one Republican senators (Barrett 2017). State governors, including six Republican governors, had recently come out in opposition to the repeal due to the potential loss of funding for their expanded Medicaid programs. They were able to derail the legislation by swaying moderator senators to their cause (Burns 2017; Burns and Martin 2017). The bi-partisan implementation of the ACA between the Democratic Obama Administration and Republican state governments restricted the ability of Republicans in the Senate to repeal the highly polarized legislation.

The high levels of partisan polarization at the national level are wreaking havoc on our political system, with the rejection of bi-partisan compromise encouraging congressional gridlock and reducing the capacity of the federal government to respond to the changing demands of the American public (Lee 2016; Mann and Ornstein 2012; Sinclair 2014). The media has registered the growing public concern with the failures of governance associated with polarization. The number of *New York Times* publications mentioning “polarization” has steadily increased from 492 articles posted in the 1990s, to 530 in the 2000s, to 858 between 2010 and 2016 (LexisNexis (Firm) 2015). The national Republican Party’s emphasis on repealing the ACA, as opposed to pursuing bi-partisan reform, is a direct product of this polarized political climate.

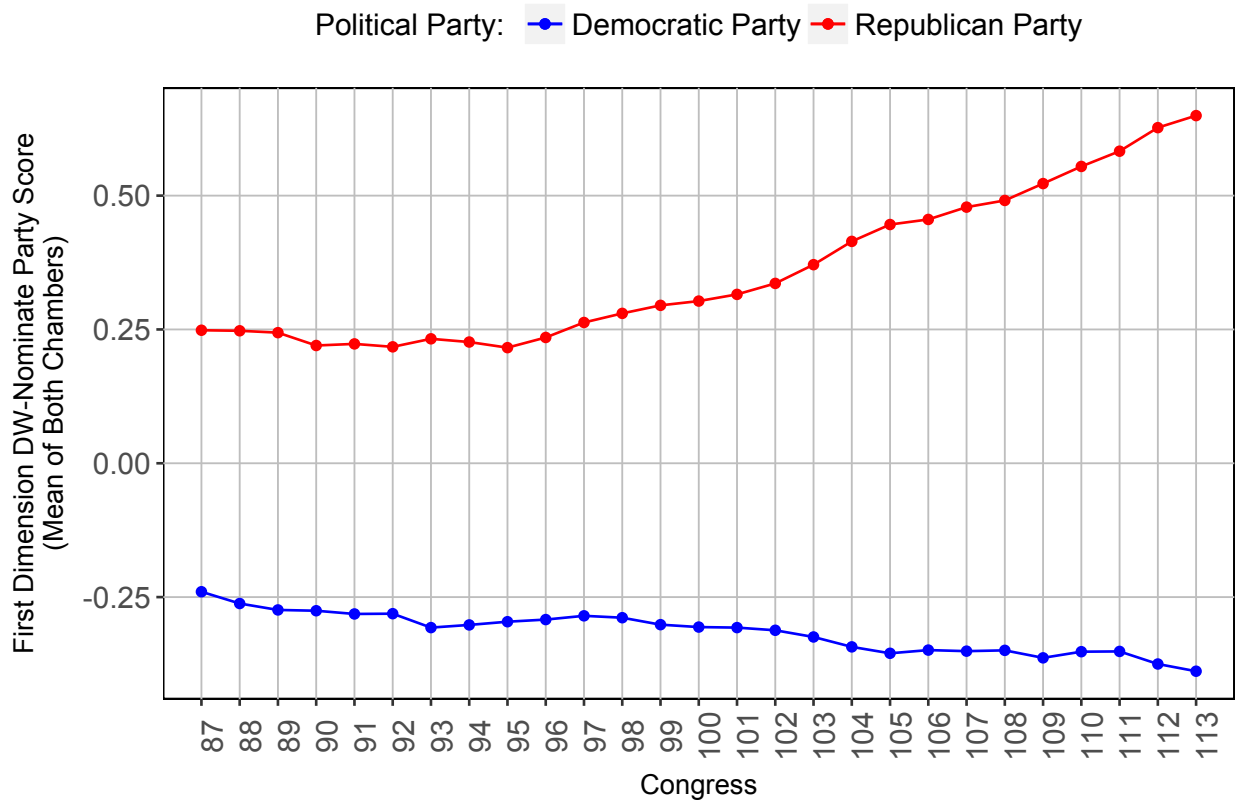
The implementation of the Affordable Care Act at the state level illustrates two of the potential outcomes produced by the interaction between national polarization and the division of power under American federalism. In Kentucky, the stance of the national Republican Party towards the Affordable Care Act trickled down into state politics, shifting the state away from cooperation with the Obama Administration and towards a policy of resistance, in spite of early successful implementation. Alternatively, when Republican control of Congress and the presidency increased the likelihood of national repeal, congressional Republican leadership was forced to confront Republican allies in the states who stood to lose from the polarized national agenda. The decision of Republican governors to buck the national agenda and engage in bi-partisan cooperation with the Obama Administration hindered the polarized Republican agenda on the issue of the ACA. These patterns in cooperation and resistance raise an important question: Under what conditions does American federalism offer a mechanism for mitigating

polarization by producing opportunities for bi-partisan policy implementation and a path to successful governance?

### **Federalism and Polarized State Resistance**

The recent increase in national partisan polarization has come to be regarded as the core challenge for effective democratic governance in recent times (Mann and Ornstein 2012; Poole and Rosenthal 2011; Sinclair 2014). While a clear definition of polarization remains heavily debated, it can, perhaps, best be characterized by the political relationships that it produces. I define polarization as a political climate in which more pronounced partisan conflict is produced by a decline in bi-partisan cooperation and increased resistance to and obstruction of the policies produced by the rival party. Resistance can be defined as an attempt by politicians to substantially hinder or block the adoption or implementation of a particular policy. The best evidence of the growth of polarization over the last forty years is the decline in bi-partisan voting measured through the congressional DW-NOMINATE scores. Figure 1.1 plots the mean position for the first dimension DW-Nominate scores for each party from 1960-2016.

Figure 1.1: Congressional Partisan Polarization (1960-2015)



Source: Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet (2017).  
Voteview: Congressional Roll-Call Votes Database. <https://voteview.com/>

The growing distinction between the parties' DW-NOMINATE scores is a direct product of the increase in party-line voting and the decline in bi-partisan compromise.

The growth of partisan polarization has been attributed to two major shifts in the political landscape over the last forty years: the sorting of the parties into clearer ideological camps and the increase in competition for control of Congress and the presidency. The ideological realignment that occurred when Southerners shifted to the Republican party in the 1970's and 1980's homogenized partisan preferences and helped to distinguish the ideological agendas of the national parties (Abramowitz and Knotts 2006; Jacobson 2000, 2012; Petrocik 1987; Sinclair 2014; Theriault 2008; Valentino and Sears 2005). Institutional shifts in Congress have further enhanced this homogenization by encouraging party-line voting, particularly within the House

(Cox and McCubbins 2005, 2007). The increase in partisan ideological distance has been pronounced since the 97<sup>th</sup> Congress in 1981, driving an increase in partisan gridlock and a decline in congressional productivity, particularly for issues with which the public is especially concerned (Mann and Ornstein 2012; Sinclair 2014).

Alongside the ideological shifts associated with partisan realignment, the growing competition between the Republican and Democratic parties for control of the presidency and Congress has encouraged the parties to emphasize policy distinctions to gain an electoral advantage. Lee argues that the increase in partisan competition and regular shifts in majority control have pushed national politicians to “invest more effort to promote their own party’s image and undercut that of the opposition” (Lee 2016, 2). The result is an increase in minority party resistance to legislation, independent of legislative content, in order to distinguish the minority party’s message and force the majority to marshal its marginal members in support of controversial legislation (Lee 2016). The combination of increasing ideological distance and the strategic withdrawal of support by the minority party has produced increased partisan conflict at the national level.

These partisan conflicts regularly impact the relationship between state and federal governments when pursuing joint policy implementation. The polarization of national politics has produced policies that increasingly coerce state governments into accomplishing partisan-specific policy goals (T. J. Conlan and Posner 2011, 2016; Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014; SoRelle and Walker 2016; Zimmerman 2007). This increase in partisan-oriented coercion has produced a corresponding increase in partisan-driven state resistance (Bowling and Pickerill 2013; E. A. Miller and Blanding 2012; Nicholson-Crotty 2012; Oberlander 2016). The conflict produced by coercive partisan policies and increasing state

resistance distinguishes what is referred to as “fractious” or “uncooperative” federalism from the previous the period referred to as “cooperative federalism” that began around the New Deal (Bulman-Pozen and Gerken 2009; Thompson and Gusmano 2014). The expectation is that conflicts between state and federal agents will reflect conflicts between the national political parties, with state Republicans challenging laws enacted by congressional Democrats, and vice versa. Highly visible battles between the Democratic Obama Administration and Republican state politicians over issues including the ACA, light-rail funding (James 2010), gun control (Maler and Simpson 2016), immigration (Z. J. Miller 2014), and environmental protections (Restuccia 2015) provide evidence for this trend.

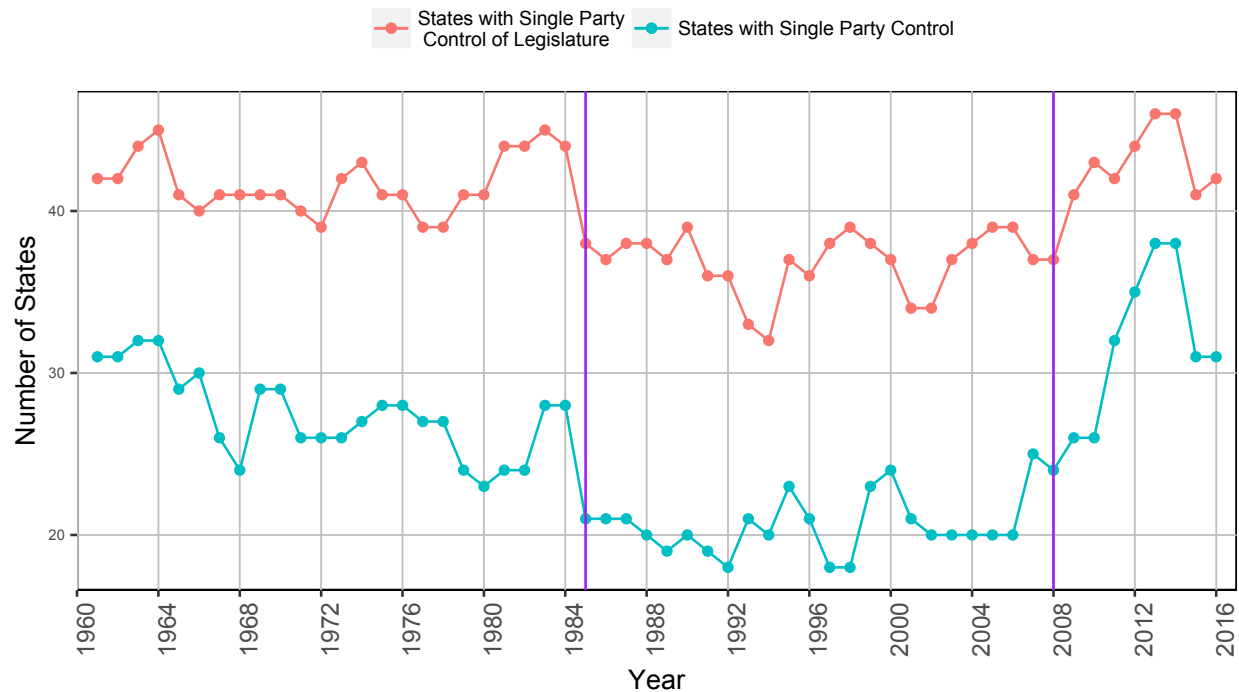
Conflict between the federal government and the states is not unique to the polarized political climate. However, the increase in polarization and partisan resistance at the national level is especially salient to understanding patterns in state response under polarization. This is due to the capacity of partisans at the state level to block policy implementation from a rival party, even when their party holds the minority in Washington. Actions of resistance that constitute symbolic gestures at the national level, like withholding support for a policy, can actually disrupt policy implementation when pursued at the state level. The result is that state politicians are likely to receive significant pressure from national partisan allies to send clear messages of resistance, particularly on policies where the national party aims to draw a clear distinction.

The potential for states to take an active role in disrupting the policy agendas of the rival party is enhanced by two trends in state politics. First, state governments have increasingly sorted into partisan camps, resulting in a return to single-party government at the state level (Abramowitz and Webster 2016; Gelman 2009; Rogers 2016). Figure 1.2 plots the percentage of



states with single-party control of the legislature and single-party control of the state government.

Figure 1.2: Trends in Partisan Control of State Institutions



Source: Klarner, Carl, 2013, "State Partisan Balance Data, 1937 - 2011", <https://hdl.handle.net/1902.1/20403>, Harvard Dataverse, V1  
Mahoney, John. "State Partisan Composition". National Conference of State Legislatures. 4/11/2018

As the figure illustrates, the rate of unified partisan control of state institutions declined during the 1980s and 1990s but has increased steadily since 2008. This increase in unified control reduces the barriers associated with divided government, granting state partisans more power to challenge national legislation produced by the rival party. Alongside unified state control, state politics has nationalized in two ways. First, state politicians are increasingly held accountable for the performance of their national partisan allies during elections. Secondly, the ideological preferences of state partisan constituencies, particularly core partisan supporters, have polarized alongside the national political parties (Abramowitz 2010; Fiorina and Abrams 2012; Hopkins 2018; Lenz 2009; Rogers 2016). This combination of national polarization and the

nationalization of state politics renders partisan-driven state resistance the expected outcome when the national parties have polarized around a particular policy.

### **Federalism and State Variation**

While the polarization of Kentucky politics may represent the rule for understanding state response to polarized federal policy, states like Ohio, New Mexico, Arizona, and most recently, Virginia, illustrate the exception. In these states, Republican politicians were willing to buck the national party and adopt Medicaid expansion. Given the competition for control of federal institutions and the thin margins of control in the Senate, the defection of just a few states from the expectation of partisan resistance can prove substantial. In the case of Medicaid, the defecting Republican controlled states that engaged in bi-partisan cooperation helped to thwart the national Republican repeal efforts in the Senate. Understanding the exceptional cases and the limits of polarization is critical to understanding state-level policy adoption, policy durability, and the impact of polarization on representation and successful governance. Given that polarized state response remains the norm, what factors combine to produce the exceptions? When might we expect to find bi-partisan cooperation between federal and state governments in spite of polarization at the national level?

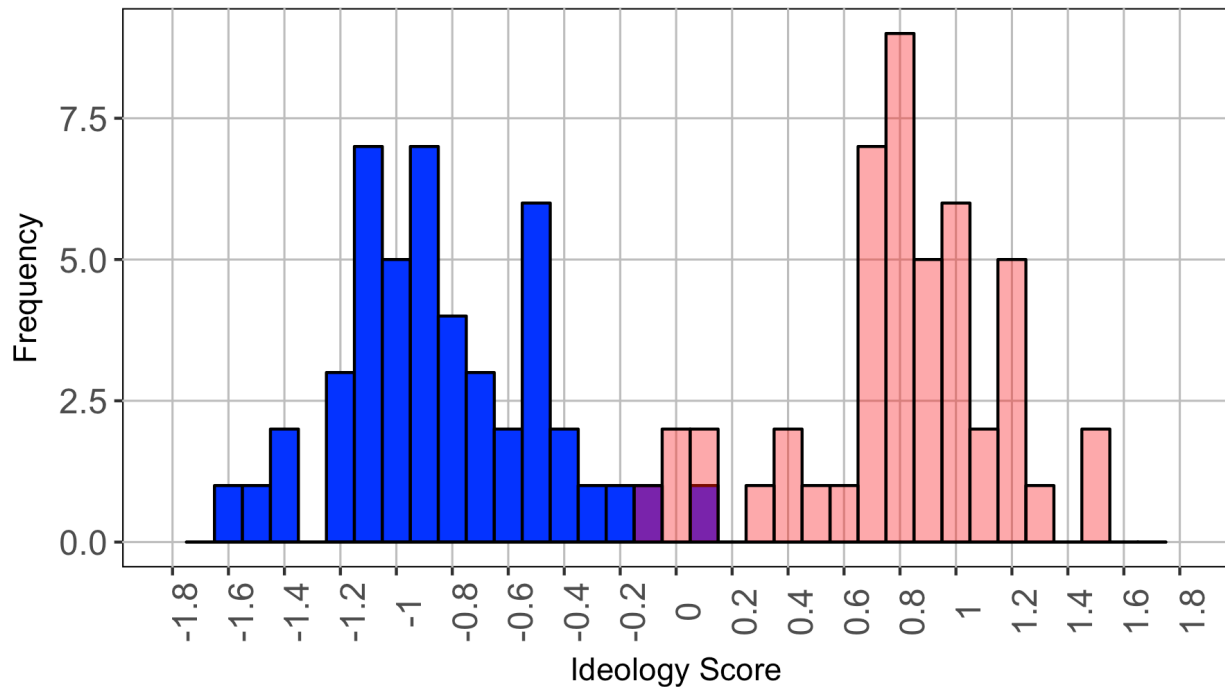
In this dissertation, I explore the potential for these exceptions by examining the relationship between polarization and American federalism. Specifically, I argue that two institutions in American politics structure the electoral motivations of state politicians when responding to federal policy. The institution of political parties produces an expectation for voters that state politicians will share partisan goals with their national allies. During periods of high polarization, this common electoral fate encourages state politicians to join their national partisan allies in withholding support for policy produced by the rival party.

I argue that American federalism can act as a counter-balancing force to the institution of political parties and can encourage bi-partisan cooperation between state and federal agents.

Federalism is the constitutional division of authority between parallel representative governing bodies at the state and national level. By dividing governing authority, American federalism also produces representational distinctions by organizing the preferences of state electoral constituencies and endowing their representatives in state government with the power to resist federal policy. Electoral constituencies are the voters, donors and businesses that contribute to a candidate's electoral success. Politicians at the state and federal level are accountable to local electoral constituencies and preferences that are rooted in the geographic boundaries of their districts. While the political parties in Congress attempt to aggregate the preferences of a national majority into a governing coalition, state parties confront a narrower ideological pool.

State constituent preferences are aggregated into state-level partisan agendas that are distinct from national partisan agendas. Figure 1.3 plots the 2014 state party ideology scores, based on roll-call votes, for each state's lower legislative chamber.

Figure 1.3: 2014 State Party Ideology Scores, Lower Chamber



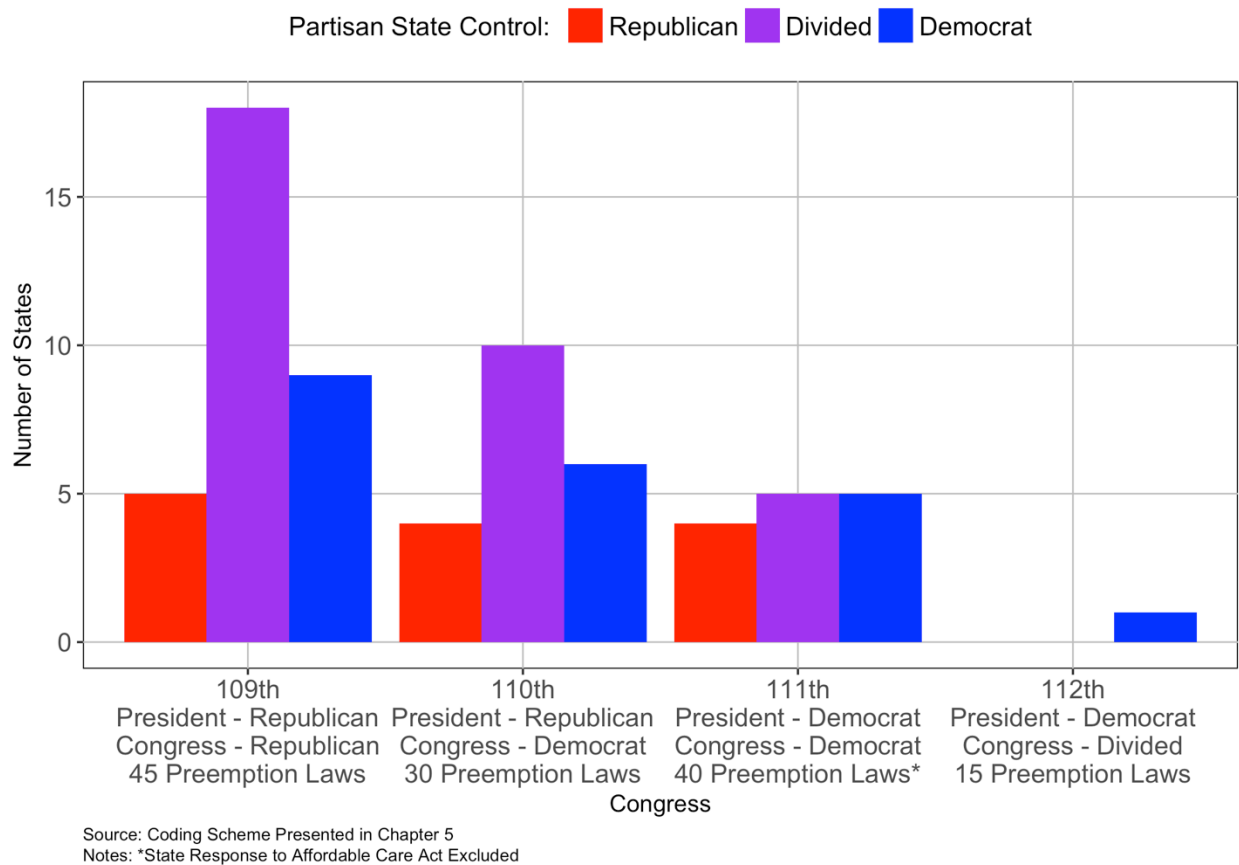
Source: Boris Shor and Nolan McCarty (2015).  
State Legislative Aggregate Ideology Data: June 2015 Update

As the figure illustrates the significant variation in local constituent preferences can produce state partisan ideologies that are both more conservative and more liberal than the national political parties. This variation indicates that the preferences of Republicans and Democrats at the state level may even overlap between states.

I argue that this variation can produce incentives for cooperation or resistance to federal policy, independent of a shared partisan label with the politicians in power in Washington. The impact of this variation in state-level partisan ideology is evidenced by the lack of partisan driven resistance to federal preemption during recent years. Federal preemption, defined as the restriction of state policy control by the federal government, provides a strong test for the role of partisanship in shaping state resistance because preemptive policy expressly aims to coerce state politicians to comply with national, and frequently partisan policy goals (Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014; SoRelle and Walker 2016). Figure 1.4 plots the number of

states, by partisan control, that adopted legislation that directly challenged federal laws that preempted state authority passed during the 109<sup>th</sup> through the 112<sup>th</sup> Congresses (2005-2012).

Figure 1.4: States that Adopted Legislation Challenging Federal Preemption



Partisan polarization produces the expectation that laws passed by the unified federal governments of the 109<sup>th</sup> and 111<sup>th</sup> Congresses would solicit strong resistance from state politicians from the rival party. However, as the figure illustrates, negative state response to federal preemption does not fall cleanly along partisan lines. While slightly more Democratic controlled states than Republican controlled states challenged the Republican administration during the 109<sup>th</sup> Congress, states under divided government constituted the largest group of challengers. These patterns persist through the 111<sup>th</sup> Congress and, I argue, are a direct product of the significant variation in state partisan policy agendas.

The result of the variation in state electoral constituencies is that the ideological distance between state partisans and the rival party in Washington may not be as pronounced as the distance between the two national parties. This can translate into significant bi-partisan compromise between state and federal agents, even during periods of national polarization. Further, while partisan competition has been shown to increase within-state polarization (Lee 2016), the ideological shifts produced by distinct state electoral constituencies can shift the focus of state-level polarization and preserve opportunities for bi-partisan engagement with the federal government. The distinct state partisan policy agendas produced by American federalism can encourage state parties to respond to electoral competition by carving out policy distinctions that are unique from the distinctions that separate the national political parties. In examining Medicaid expansion under the ACA, I find that the electoral pressure to reject the agenda of national partisan allies that is produced by these distinct local constituent pressures can actually be amplified by partisan competition for control of state institutions. The resulting potential for bi-partisan negotiation and engagement with politicians in Washington produces an avenue for continued governance and the implementation of public policy in spite of both ideological and electorally motivated polarization.

While this dissertation aims to examine the relationship between polarization and the potential for conflict between state and federal governments, there are a number of limitations to applying this theory to explain all patterns in American federalism. First, while I choose to focus on the origins of conflict and the potential for cooperation and resistance between rival partisans, I am agnostic as to the outcome. For this reason, the federal courts, which remain the critical arbiter in battles over federalism, are absent from my examination. By ignoring the outcomes of conflicts, I ignore the resulting changes in the distribution of power produced by key court

rulings. In addition, my focus on partisan oriented conflict ignores the abundant non-partisan relationships between federal and state bureaucracies. Finally, I focus on the aggregation of interests at the state level insofar as it drives the conflict between Washington and the state capitals. While the Constitution separates power between state and federal governments, the reality of American federalism is more layered, with local government also retaining significant governing capacity. Municipal and county governments add an additional layer to policy negotiations and another potential source of resistance and cooperation with both state and federal governments.

In spite of these limitations, the goal of understanding the extent to which the current polarized climate has produced new patterns of conflict between state and federal governments remains critical to understanding the potential for bi-partisan engagement under polarization. I argue that a dual-institutional explanation for the electoral motivations of state politicians provides critical leverage for understanding when the relationship between state and federal governments will reflect the polarization of the national political parties. When the substantial policy goals of state politicians are in conflict with those of partisan rivals in power in Washington, then the dual institutions of political parties and federalism produce uniform electoral motivations. When this occurs under high levels of polarization, then conflicts between state and federal governments regularly replicate the conflicts between political parties in Congress. However, when these institutions structure the electoral motivations of state politicians in divergent ways, it can create inconsistencies by positioning local goals in opposition to the goals of national partisan allies. This variation can be amplified by within-state partisan competition, producing incentives for state governments to reach across the aisle and engage with rival partisans in Washington.

## **Organization of the Project**

The remainder of this project will explore the potential for bi-partisan policy implementation between state and federal governments in spite of polarization by examining how the overlapping institutions of American federalism and political parties structure the electoral motivations of politicians in situations intergovernmental conflict. Chapter 2 provides a theoretical account of patterns in state resistance by examining how these overlapping institutions structure conflicts in two ways: by creating incentives to follow the agenda of the national political party and by organizing local constituent preferences that can motivate state politicians to deviate from national partisan goals.

Chapter 3 and 4 explore the federal government's role in producing conflict with state governments by illustrating how polarization has altered the federal government's attitude towards the states in ways that create the potential for intra-partisan conflict. Chapter 3 sketches a brief historical account of the disputes between state and federal officials, arguing that the electoral motivations of national politicians are also conditioned by the overlapping institutions of federalism and national political parties in ways that have informed the historical paradigmatic shifts in American federalism. Until recently, the overlapping institutions of federalism and political parties have encouraged national politicians to adopt policy that reduced conflict with state agents. During the periods of "dual" federalism and "cooperative" federalism, national politicians deferred to the policy preferences of state politicians when assigning policy implementation to state governments. This avoided conflict due to variation in local preferences and allowed contradictions between state and national partisan goals to persist under a common national label. However, the growth of more coercive policies is a direct product of the shifting electoral motivations of national politicians due to changes associated with partisan polarization.



As congressional partisan preferences became more homogenous, the benefits of deference to state agents were undermined by the heightened risk that state implementation would disrupt the national partisan agenda. The use of more coercive policies increased the potential for conflict with state agents due to variation in local policy preferences.

Chapter 4 argues that, alongside more coercive policies, the escalation of partisan polarization has encouraged national politicians to avoid state resistance by attempting to decentralize policy when partisan allies are in control of more state institutions. Existing literature establishes two mechanisms for explaining variation in the assignment of federal policy implementation to state agents. Decreases in public support for national involvement can encourage Congress to assign policy implementation to the states to avoid public criticism. Alternatively, the risk that states controlled by partisan rivals will deviate from policy goals can encourage Congress to assign implementation to national executive agencies as opposed to state governments. Chapter 4 argues that polarization shifts Congressional politicians away from the electoral motivations associated with broad public support and towards more partisan-oriented electoral incentives. Using data from 1953-2014 federal budgets I show that under median levels of polarization, the proportion of grants for public, non-defense, federal spending decrease as public support for national involvement increases and increase as the rate of allied partisan control of state institutions increases. However, increases in polarization amplify the association between partisan control of state institutions and the allocation of federal funding to the states. The combination of the increased use of coercive policies and the partisan-oriented patterns in decentralization sets the stage for state partisans to conflict with national partisan allies due to variation in local preferences.

Chapter 5 outlines the limitations of partisan-driven state resistance under American federalism by demonstrating the significant variation in state response to federal policy, independent of a common partisan label between state and federal politicians. I develop a unique data set of state legislation that directly responds to federal laws adopted from 2005-2012 that preempt state control of policy. State response is coded as cooperation, negotiation or resistance to federal preemption. I find that the presence of a common partisan label between state and national majorities is not a statistically significant predictor of negative state response to federal policy. In other words, state politicians do not appear to be more likely to challenge federal laws that preempt state authority when those laws are adopted by partisan rivals at the national level. Instead, state response to federal expansion is conditioned on the degree of federal coercion and the administrative capacity of the state. I find that the justifications for negotiation and resistance within state legislation focused on local constituent interests and the preservation of state power and control in the face of the federal expansion of power.

Finally, Chapter 6 applies this argument to the implementation of Affordable Care Act to explore the impact of electoral competition in shaping state response to federal policy. As a test case, Medicaid expansion holds the highest potential for exhibiting partisan-driven state response due to the concerted national Republican repeal effort that extended well beyond the original passage of the law. The Supreme Court's decision to grant considerable state authority to reject or negotiate Medicaid expansion under the Affordable Care Act thrust the highly polarized health law to the forefront of federalism conflicts. Many Republican controlled states followed the national partisan agenda and rejected Medicaid funds after this ruling. Other Republican states, including Ohio, New Mexico, and Arizona, opted instead to engage in bi-partisan implementation, at times in spite of relatively conservative state party platforms. I use concrete

state actions to compile a new measure of state participation in Medicaid expansion. Using this measure as the dependent variable, I find that local partisan ideology is a significant predictor of state response to Medicaid expansion. Further, I find that strong state inter-party competition can mitigate the impact of more extreme local ideologies, encouraging negotiation with the federal administration instead of outright resistance or cooperation. The results illustrate that for even a highly polarized federal policy, we still find that American federalism can structure local ideological preferences in a way that produces some exceptional cases of bi-partisan cooperation.

In sum, this project provides a framework for understanding the impact of polarization on American federalism and explores the potential for bi-partisan policy implementation in spite of the increase in conflict between the national political parties. The polarization of the national political parties has resulted in an increase in coercive federal law that attempts to enforce national partisan policy goals on state governments. This increase in coercion and the increase in partisan-oriented decentralization has set the stage for an expansion of partisan-driven state resistance. However, the unique local preferences structured by the institution of American federalism can motivate state politicians to deviate from the goals associated with their chosen partisan label. The disjuncture between national partisan agendas and distinct local preferences can produce avenues for state negotiation and bi-partisan policy implementation in spite of consistent national polarization.

## CHAPTER 2

### BETWEEN NATIONAL PARTIES AND LOCAL CONCERNS: HOW INSTITUTIONS, STRUCTURE CONFLICTS IN AMERICAN FEDERALISM

*“Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress.” - Alexander Hamilton, The Federalist Papers*

The Revolutionary War had brought together thirteen distinct colonies with established, independent governments. Accordingly, one of the greatest challenges of the Constitutional Convention was balancing the need for a centralized government with the existing sovereign power of these new states. The shift in focus from the heavily decentralized Articles of Confederation to an expanded national authority was abundantly evident in the text of the two documents. The reservation of all non-enumerated powers to the states appears as the first substantial article in the Articles of Confederation (Article II). Just 10 years later, the Constitution only included a similar statement as the final amendment within the Bill of Rights. Far from resolving conflict between state and national politicians, the division of power between state and federal governments outlined within the Constitution remained unclear and subject to contestation. The Constitution’s Commerce Clause, and the subsequent Due Process Clause of the Fourteenth Amendment enabled federal expansion. Conversely, the Tenth Amendment provided only a vague outline of state power, leaving states the latitude to accept, negotiate, or even challenge federal activism.

The result has been constant negotiation between federal and state agents over the scope of their respective powers. This dynamic has produced recurring and sometimes conflicting

reconfigurations of American federalism, as state and national politicians respond to new policy demands and constituent shifts. This variation has led many scholars to abandon broad theories of federalism, instead focusing on explanations of these unique arrangements. The list of “federalisms” continues to grow and now includes, Go-it-Alone, Pushback, Bottom-Up, Fend-for-Yourself (Gamkhar and Pickerill 2012), Black-Tie (Ann O’M Bowman and Pagano 1994), Fragmented (Bowling and Pickerill 2013), Uncooperative (Bulman-Pozen and Gerken 2009), Pressure-Cooker (E. A. Miller and Blanding 2012), Fractious (Thompson and Gusmano 2014), Opportunistic (T. Conlan 2006), Coercive (Zimmerman 2001), and Rhetorical (Leonard 2011) to name a few. Zimmerman characterizes this dynamic pattern as “Kaleidoscopic Federalism”, emphasizing the constantly shifting and whimsical nature of the division of power (Zimmerman 2001).

As the epigraph opening this chapter suggests, many at the moment of the founding recognized and even praised this contested arrangement. Writing as Publius, Hamilton claimed that the constitutional division of power between two parallel sovereignties provided an additional check on the dangers of ambitious factional power and unhindered government. As his collaborator James Madison would argue in *Federalist* 46, “The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designed for different purposes” (Madison, Hamilton, and Jay 1999, 262). Hamilton and Madison claimed that, by responding to their distinct constituent preferences, electorally motivated politicians at the state and federal level would produce the various conflicts between state and federal governments. As Samuel Beer noted in 1978, “Within this general scheme, the federal division of powers served a representative function by creating a structure of mutual balance and influence between the two main levels of government” (Beer 1978).

This chapter builds on this claim by arguing that two critical institutions in American politics help to structure the electoral motivations of state officials when responding to federal policy: 1) federalism, which establishes the distinct boundaries of state constituent groups and organizes their preferences, and 2) national political parties, which bridge these distinct state interests into a shared partisan agenda and corresponding label used by political aspirants in their efforts to win office. The overlapping institutions of American federalism and national political parties can structure electoral incentives in ways that encourage conflict between state and federal officials. Partisan disputes occur when state and federal officials conflict due to their identification with rival political parties. Alternatively, the institution of federalism can encourage conflict by organizing distinct local constituent preferences for or against national policies, independent of partisan labels. I argue that the potential for state politicians to confront divergent electoral pressures creates avenues for bi-partisan policy implementation in spite of the polarization of national political parties. In this chapter, I derive hypotheses that use the variation in institutional structures to explain patterns in federal expansion and state response. These hypotheses will be elaborated upon in more detail and evaluated empirically in the remainder of the dissertation.

### **Constituent Preferences, Federalism, and the Electoral Connection**

I begin with the assumption that disputes in federalism, like other conflicts in public policy, are fought between electorally motivated politicians. Electoral motivation implies that politicians are, at a minimum, conscientious of the preferences of their electoral constituency, conceived broadly as all of the voters, donors and businesses that contribute to a candidate's electoral success (Aldrich 1995; Downs 1957; Mayhew 2004). It does not, however, imply that politicians will blindly follow their voters' preferences. Politicians may hold policy goals

reflective of their own personal ideology but these goals will be secondary to electoral motivation, because without electoral success they lack the power to accomplish them (Fenno 1973; Mayhew 2004). The result is that state and federal politicians will craft policy that either appeals to their electoral supporters, or at a minimum, avoids negative responses from their electoral constituencies by concealing support for controversial policies or attempting to sway public opinion (Arnold 1990; L. R. Jacobs and Shapiro 2000).

In developing policy agendas, politicians target critical constituent groups, whose support they require for electoral success. In describing the decision-making of House members, Richard Fenno (1978) posited a concentric-circle approach to understanding constituencies, where conceptions of the electorate move from broad geographic constituencies to their own personal constituency. The geographic constituency is marked by the political boundaries of a candidate's district. At the broadest electoral level, the "reelection constituency" constitutes a demarcation of supporters from non-supporters. This division is often centered on partisan or geographic lines, with legislators being able to clearly distinguish, "I do well here; I run poorly here" (Fenno 1978, 8). Within this broader circle lies the collection of core supporters, or the "primary constituency" that support their candidate "through thick and thin" (Fenno 1978, 18). This constituency accounts for a great deal of a candidate's political capital, including funding for campaigns and volunteer work through activist mobilization. Finally, an even narrower circle exists, the candidate's "personal constituency" or those personal friends "to whom he has entrusted his political career" (Fenno 1978, 24). While Fenno's bullseye highlights the electoral motivations produced by different constituent groups, these preferences are circumscribed by the geographic borders of a candidate's district or state.

Fenno's focus is on the actual voters that support a particular candidate in an election. For my own theory, I expand this definition of constituency to incorporate the donors, non-profits, and businesses that further enhance a candidate's chance of election through monetary support or endorsement. Elected officials will work to preserve their existing electoral constituencies, both voters and donors, by pursuing policy agendas that have historically brought them or their party success within their electoral circle (Fenno 1978; Petrocik 1996). However, politicians in power will address issues owned by the rival party or new issues when they confront ambitious electoral challengers or when public opinion raises the salience of an issue (Ansolabehere and Iyengar 1994). This responsiveness occurs independent of whether or not politicians respond to elite pressures (Bartels 2009; Flavin and Franko 2017; Hacker and Pierson 2005) or aggregate public opinion (Ellis and Stimson 2012; Erikson, MacKuen, and Stimson 2002; MacKuen, Erikson, and Stimson 1989; Page and Shapiro 2010). As politicians are forced to address new issues due to growing public concern, it creates opportunities for policy agendas to shift and can produce new conflicts between state and federal agents as they compete for control of those policies (Baumgartner and Jones 2010; Kingdon 1995; Peterson 1995, 2005, 2006; Volden 2005, 2007).

While this assumption appears core to the nature of democratic institutions, the political reality of electoral accountability is not nearly as optimistic. Research has found abundant evidence of the extensive efforts of politicians to confuse the electorate, hide policy decisions, or ultimately sway voters opinion on policy (Arnold 1990; L. R. Jacobs and Shapiro 2000; Mettler 2011). This obfuscation has caused scholars to seriously question the potential for governmental accountability across policy issues, arguing instead for elite formation of policy agendas (Bartels 2009; Hacker and Pierson 2005; L. R. Jacobs and Shapiro 2000). Federalism is especially prone



to such critiques. As Martha Derthick effectively argued, the true check on federalism came not from elections but from the federal judiciary, which claimed the role of arbiter (Derthick 1992). The reality of electoral federalism, Derthick claims, centers not on accountability but on concealment. She argues:

“The dominant pattern of policymaking in our federalism of pervasively shared functions seems to me not so much checking and balancing by design of the people, but opportunistic cost shifting and benefit distribution by design of elected officeholders in the context of a general obfuscation of responsibility” (Derthick 1992).

Derthick’s assessment is correct, insofar as it concerns accountability. The citizenry is largely unable to adjudicate conflicts of power between the different branches directly.

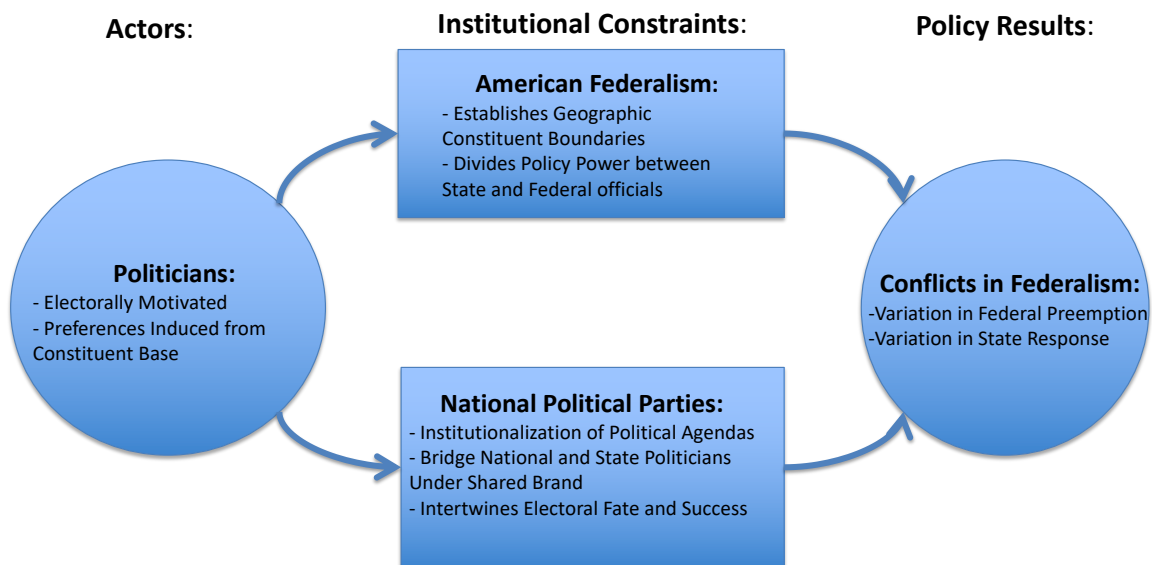
However, the assumption of electoral motivation is distinct from an assumption of accountability. Citizens do not need to choose one level over the other on the abstract question of federalism for politicians to take into account their preferences. What matters is whether politicians consider the potential electoral ramifications when crafting policy responses to the policies of other levels of government. As Mayhew argues, while there are “occasional Congressmen who intentionally do things that make their own electoral survival difficult or impossible”, these “saints” are rare (Mayhew 2004, 16). The same can be said for politicians at the state level. Thus, in spite of the fact that federalism conflicts end in the courts and not the ballot box, their origins still lie in the efforts of elected officials to frame policy in ways that foster electoral support or at least avoid electoral challenge. Understanding the variation in federal expansion and state response requires moving beyond incentives for reelection to the institutional arrangements of American politics that structure these incentives.

### **Institutional Boundaries of Conflicts in Federalism**

While conflict between state and federal officials is rooted in the electoral motivation of politicians, it is also structured by the institutions of the American political system. The

institution of American federalism divides governing authority between distinct and parallel governing bodies and, in doing so, organizes the preferences of geographically circumscribed constituent groups at the level of state government. Alternatively, national political parties produce policy agendas that can constrain individual politicians who adopt a partisan label, particularly during periods of high polarization when distinctions between the parties are more clearly drawn. The resulting institutional framework is illustrated by Figure 2.1.

Figure 2.1: The Dual Institutional Constraints on Conflicts in Federalism



As the figure illustrates, the combination of the two distinct institutions conditions the behavior of state and federal actors, producing patterns of cooperation and conflict. Understanding variation in state response to federal policy, both under polarization and more generally, requires understanding the potential influence of these two institutions on state politicians.

### ***Distinct Constituencies and the Role of Federalism***

The state boundaries associated with American federalism structure the electoral motivations of state politicians by producing geographically distinct constituent preferences

regarding national policy. Politicians at both the state and federal level confront unique constituencies within their district boundaries that influence their political preferences and agendas. By dividing governing authority between state and federal governments, American federalism aggregates these preferences into distinct representational bodies at the state and federal level. The result is that state-level political parties respond to the unique resources, citizen preferences, businesses, and even political cultures within their circumscribed geographic boundaries by producing partisan agendas and a partisan ideology that is potentially distinct from that of either national political party or other states (Shor and McCarty 2011; Tausanovitch and Warshaw 2013).

In defending the Constitution against concerns of federal overreach, Publius argued that the construction of these local constituent groups could check federal expansion. Hamilton, for instance, claimed that citizens would show more allegiance to state governments, arguing that, “affections are commonly weak in proportion to the distance of diffusiveness of an object” (Madison, Hamilton, and Jay 1999, 87). Further, Publius argued that the states retained many of the powers that affect the daily lives of citizens. These included police protection, regulation of the family, and the establishment of individual property laws. Not only do these powers provide credible and direct allegiance from local constituents due to the clear benefit of security, they also require an expansive apparatus with abundant positions (Madison, Hamilton, and Jay 1999, 262). The result is that citizens were more likely to know the people working in state and local government and themselves be the beneficiaries of local positions and patronage. In addition, citizens were more likely to understand the political stakes of issues at the local level due to the direct influence state policy had on their daily lives. For Publius, the proximity of the state

governments to the citizens they govern created “so many rivulets of influence, running through every part of the society” (Madison, Hamilton, and Jay 1999, 88).

The competition for constituent affection between state and federal governments has been more active than Publius originally suggested, with citizen awareness of state politics declining in proportion to the degree that the national media has brought Washington politics into the everyday lives of citizens. Nonetheless, politicians at both the state and federal level remain aware of local voters and the critical role they play for continued electoral success. Research has shown that voter preferences and ideology vary widely between states (Tausanovitch and Warshaw 2013). This significant variation has led to variation in state partisan agendas relative to other states and to the national parties’ agendas (Shor and McCarty 2011). Further, the variation in resources and business environments within states have encouraged fragmentation in state implementation of federal policy (Callaghan and Jacobs 2016; Cline 2003; Helland 1998; Hertel-Fernandez, Skocpol, and Lynch 2016; Nicholson-Crotty 2004; Rosenthal 1980; Scholz 1986; Thompson and Scicchitano 1987; Volden 2005, 2007; Woods 2008). Unique constituent preferences within states can encourage state politicians to resist federal policies that burden local constituents, or cooperate with policies that are beneficial to local groups. It was this significant variation in constituent preferences that caused Eisenhower to lament his failed attempt to unify the Republican Party in 1956 by telling the press, “Now, let’s remember, there are no national parties in the United States. There are forty-eight state parties, then they are the ones that determine the people that belong to those parties” (Reston 1956; Rossiter 1964). While state politics has increasingly nationalized, particularly within the ranks of the core partisan supporters, there still remains significant variation in local businesses and concerns to drive variation in state-level partisan platforms.

### ***Partisanship and the Role of National Political Parties***

While local preferences may have thwarted Eisenhower's efforts, the identification with a national political party, nonetheless, remains an active concern for most state politicians as they navigate conflict with the federal government. National political parties grew out of the need to resolve the collective action problems associated with elections and agenda selection in Congress. By developing a partisan label to identify a shared policy agenda amongst a group of candidates, politicians were able to harness more uniform constituent support and streamline electoral processes (Aldrich 1995). As partisans organized within government, they further developed these distinctions by establishing policy agendas based on their elected members (Cox and McCubbins 2005, 2007). While this label provides a national policy agenda for candidates to appeal to, that agenda is distinct from any given state agenda because it is a product of the preferences of representatives from multiple states .

Partisan institutions in American politics took on a uniquely federated organizational structure that mirrored the governing offices they sought to obtain. By sharing a common label between state and federal agents, parties simplified voting for constituents (Aldrich 1995). I refer to partisan allies as politicians and candidates that share a partisan label (currently, the two major labels are Republican and Democrat) no matter the level of government at which the official operates. Conversely, I refer to rival partisans and the rival party as the group of candidates that associates with the other major partisan label within the American two-party system. In other words, rival partisans are those partisans who offer the strongest competition for control of national institutions.

The existence of shared resources between state and national partisan organizations, most notably partisan label and agenda, establish a shared fate between these groups. The result is that

national political parties produce expectations that state-level candidates that share a particular label will pursue a similar agenda between states and in line with the national partisan agenda. Voters have increasingly relied on the national partisan label, as opposed to specific candidate qualities, in selecting candidates at all levels of government producing significant national coat-tails effects for down-ballot candidates (Abramowitz and Webster 2016; Jacobson 2015; Rogers 2016). This expectation creates an electoral motivation for state-level partisans to participate in the patterns of polarized partisan resistance that are employed to distinguish the national political parties.

### **Between National Parties and Local Concerns**

The institutions of American federalism and national political parties structure the electoral motivations of state-level elected officials and influence their decisions when crafting policy positions to gain electoral support. The dynamic produced by the intersection of these institutional structures can result in distinct patterns of conflict and cooperation between federal and state agents. While a partisan label joins national and state politicians, their unique geographic constituent preferences complicate policy appeals and create opportunities for producing conflicting electoral motivations. Samuel Beer highlighted the conflict between these institutions during his 1977 Presidential Address to the American Political Science Association:

“The original federal design endowed the voter with two basic roles, a federal role and a state role. Typically, any major American party has reflected this dualism. The territorial pluralism of the federal structure has had such a great and obvious effect as to lead us often to speak of the parties as coalitions of state and local organizations. At the same time, we recognize that their participation in the politics of the general government draws them into a competition, which addresses the problems and appeals to group interests transcending state and local boundaries. In spite of the resulting territorial and social pluralism, each party is also national, as a body of voters possessing at all levels of government common symbols which focus sentiments of party identification and ideas of party principles.”(Beer 1978)

This bridging role of the party and the conflicting electoral motivations it can produce for state politicians and parties under American federalism can help to clarify the patterns of conflict between state and national governments.

Conflicts in federalism are produced when the electoral motivations of state and national politicians encourage divergent policy goals and the states retain the ability to challenge federal policy under the Tenth Amendment. Table 2.1 establishes the relationship between these two institutions and the potential state response to changes in federal policy.

**Table 2.1: Institutional Constraints on Variation in State Response to Federal Policy**

		<b>Partisan Label (Political Parties)</b>	
		<b>Allied</b>	<b>Rival</b>
<b>Constituent Preferences (Federalism)</b>	<b>Similar</b>	I. Cooperation	II. Negotiation (Partisan Conflict)
	<b>Distinct</b>	III. Negotiation (Federalism Conflict)	IV. Resistance (General/Polarized Conflict)

The horizontal, or political parties axis establishes the partisan relationship between the federal office holders that adopted a policy and the state agents responsible for implementing or responding to the policy. If the same party controls both state and federal institutions, the state ought to fall into the first column, resulting in cooperation or negotiation between partisan allies. Alternatively, if rival parties control state and federal institutions, the institution of political parties will structure electoral incentives in ways that encourage either negotiation or resistance to federal policy.

The vertical, or federalism axis establishes the relationship between the constituent preferences that informed the adoption of the federal policy and the distinct constituent preferences that politicians confront in each state. This axis attempts to capture the ideological variation produced by unique state constituencies relative to the policy goals of the federal law. If local constituent preferences are distinct from the policy goals of the federal law, then federalism can structure electoral motivations to encourage negotiation and resistance. Alternatively, if local preferences align with national policy goals, the ideological parallels between state and national constituencies can encourage cooperation or negotiation.

For the purposes of this table, both partisan labels and constituent preferences are assumed to be aggregated into policy at the state level and are separated into binary categories. The reality is much more complex. Divided government at the state or federal level provides a continuum of options with regard to the presence of shared partisan labels. In addition, constituent preferences can occur along multiple dimensions, especially for complex laws, resulting in a range of local preferences. However, the range of state responses can operate on a similar continuum, from cooperation, through negotiation, and up to outright resistance.

When the majority of state elected officials share a partisan label with federal officials and confront similar constituent preferences (cell I) they are more likely to cooperate with federal policy goals. In this situation, the institutions of political parties and American federalism encourage reinforcing electoral motivations because both state and national politicians stand to gain from the success of federal policy due to their shared electoral fate and parallel constituent preferences. In the case of full federal preemption, or the removal of policy control from state agents, cooperative responses may require no state action at all and instead merely require a lack of state resistance. Goal disagreement between federal and state agents due to either partisan



identification or geographic constituent preferences produces conflicts between state and federal politicians.

The structure of the Constitution and the historical control of most policy arenas by state governments has positioned the federal government as a unique first-mover in conflicts between state and federal agents. When the federal government moves to address a new public concern, Congress can craft policies in ways that incorporate state involvement, ranging from full state control of policy implementation to total federal preemption, or the removal of all state-level policy discretion. In this sense, Congress can encourage or discourage conflict by crafting policy in ways that create state-level representational distinctions through either of the institutions of political parties or American federalism. This leads to the *Federal Hypothesis*.

*Federal Hypothesis: Federal policy can encourage negative state response when a.) policy is designed to coerce state institutions to implement specific policy goals or to remove state control of policy entirely **and/or** b.) the national political parties have polarized around the issue and the federal policy lacks bi-partisan support.*

The *Federal Hypothesis* establishes the conditions necessary for conflict under each institution. Coercive federal policies are policies that centralize policy control and thus limit state discretion when implementing policy. This creates opportunity for conflict under the institution of American federalism, when local preferences run counter to national policy goals. Alternatively, polarization around a federal policy places an issue on the national agenda and can encourage states to conflict over that policy based on partisan distinctions, independent of policy content.

The alternative to more coercive and partisan oriented federal policy is federal policy that defers to the unique preferences of each state. Deference to state preferences grants states the maximum latitude in policy implementation, thereby reducing the potential for conflict associated with both institutions. It allows rival partisans in the states to pursue shared policy agendas (cell II). It also permits state partisan allies to pursue distinct local agendas that will

enhance their opportunities for reelection and prevent conflicts within the national partisan agenda (cell III). Finally, deference to state preferences reduces outright resistance by partisan rivals that would challenge the constitutionality of new laws (cell IV).

While deference reduces conflict, less diverse policy preferences within the majority party in Congress may encourage more coercive federal policies that prevent state deviation from the expressed federal policy goals. As the *Federal Hypothesis* suggests, conflict between state and federal agents over the boundaries of federalism will occur when state governments are prevented from deviating from national policy to better account for the electoral pressures structured by the institutions the national political parties or federalism. States will be more likely to resist federal policy when the institutions of American federalism and national political parties structure the electoral motivation of state politicians in reinforcing ways, resulting in the *Resistance Hypothesis*.

*Resistance Hypothesis: States will be more likely to resist federal policy when state politicians confront electoral pressure to challenge federal policy due to **both** a.) the distinct local policy preferences structured by American Federalism **and** b.) national partisan polarization concerning the policy.*

Alternatively, when federalism and partisan affiliation produce divergent pressures, then the presence of shared policy specific or partisan-oriented goals between state and federal agents can result in negotiation. This possibility is captured in the *Negotiation Hypothesis*.

*Negotiation Hypothesis: States will be more likely to negotiate federal policy when state politicians confront electoral pressure to challenge federal policy due to **either** a.) the distinct local policy preferences structured by American Federalism **or** b.) national partisan polarization concerning the policy, **but not both**.*

The *Negotiation Hypothesis* predicts that state response will converge on negotiated responses when state politicians experience cross pressure produced by the institutions of federalism and political parties. In other words, states will attempt to negotiate when the local constituent

preferences within their state are at odds with the policy goals of partisan allies at the national level. State partisans confronting constituent preferences that are similar to rival partisans at the national level can appeal to shared policy goals when negotiating policy implementation (cell II). Alternatively, state partisans with distinct goals from their national allies can appeal to a shared partisan label when negotiating with national politicians (cell III). It is under the *Negotiation Hypothesis* that the potential for bi-partisan policy implementation between state and federal agents exists. When local preferences produce state-level policy goals and ideology that are closer to national partisan rivals than national partisan allies, then states may be willing to reach across the aisle to accomplish those goals in spite of polarization.

When the electoral motivations of state politicians are incongruent, politicians must navigate the conflict between local preferences and their national party's agenda. Deference and negotiation can render contradictions between state and national partisans relatively stable. However, voters may reject the contradiction and replace state officials with candidates that will bring state and national partisan agendas into better alignment. Successful primary challengers can replace politicians that disrupt partisan agenda, bringing state parties into alignment with national partisan policy goals. Alternatively, conflicted partisans in power can be replaced with members of the rival party, shifting state response to federal policy towards cooperation or resistance along partisan lines. The threat of electoral replacement can encourage state politicians to alter their response to federal expansion by either adopting the national partisan position or occasionally switch parties.

### **Polarization and the Potential for Conflict**

The *Federal Hypothesis*, *Resistance Hypothesis*, and *Negotiation Hypothesis* illustrate how the institutions of federalism and national political parties interact to structure the electoral

motivations of state politicians when crafting policy responses to federal expansion. Decisions at the federal level set the stage for state response by providing potential sources of conflict. National policies that coerce state agents into achieving specific policy goals can restrict state discretion and produce conflict due to variation in local policy preferences. Further, polarization, or an increase in resistance to the policies of rival partisans, can trickle into state politics, encouraging states to resist policy in order to draw clear partisan distinctions and participate in a national partisan agenda. State response, however, is critically conditioned on not only the potential for federal conflict produced by the national policy itself, but also the conditions within the state. When the ideology and policy goals of state partisans align with their national partisan allies, it produces reinforcing pressures, resulting in cooperation with partisan allies and resistance to the policies of partisan rivals. However, states are cross-pressured when the institutions of federalism and political parties structure electoral motivations in ways that create distinctions between the policy agendas of state and federal partisan allies. This cross-pressure can encourage negotiation with partisan rivals and can create opportunities for bi-partisan policy implementation in spite of polarization. The subsequent chapters will explore how this theory provides a mechanism for understanding the potential impact of polarization on the distribution of power between state and federal agents and the likelihood of bi-partisan implementation in spite of polarization.

### CHAPTER 3

## FROM DUAL FEDERALISM TO COERCIVE POLITICS: REPRESENTATIONAL INSTITUTIONS AND THE HISTORY OF FEDERALISM

*“The question of the relation of the States to the Federal Government is the cardinal question of our constitutional system. At every turn of our national development we have been brought face to face with it, and no definition either of statesmen or of judges has ever quieted or decided it. It cannot, indeed, be settled by the opinion of any one generation, because it is a question of growth, and every successive stage of our political and economic development gives it a new aspect, makes it a new question. The general lines of definition which were to run between the powers granted to Congress and the powers reserved to the States the makers of the Constitution were able to draw with their characteristic foresight and lucidity; but the subject-matter of that definition is constantly changing, for it is the life of the nation itself.”*

-Woodrow Wilson, “The States and the Federal Government”,  
1908

As President Wilson argued in the epigraph of this chapter, the question of American federalism and the division of power between state and federal governments lies at the core of American politics. In describing federalism, scholars have approached the variation in patterns of conflict in the same way biologists approach a descriptive taxonomy. The perception of a consistent national approach to the relationship between state and federal governments has produced criteria to distinguish the broader historical epochs. The expansion of federal authority through constitutional shifts and Supreme Court decisions led scholars to label these historical epochs “dual” federalism, “cooperative” federalism and “coercive” or “uncooperative” federalism. As state politicians negotiate and engage with their federal counterparts against the backdrop of these paradigms, they generate unique arrangements that produce the various species of federalism. This taxonomy attempts to provide a descriptive interpretation of federalism through critical junctures and state-policy variation.

This descriptive taxonomy has provided a wealth of information on the unique arrangements of federal and state power both within distinct policy arenas and throughout history, but provided few mechanisms for understanding shifts between these arrangements. In this chapter, I illustrate the role of electoral motivation and layered institutions in producing the potential for conflict between state and federal agents by sketching a brief history of the disputes between federal and state agents. Historically, when adopting new policies, national politicians have had three options regarding their interaction with state agents: 1.) to pursue policy implementation independent of state governments, 2.) to decentralize policy implementation to state agents by providing critical funding and support, or 3.) to coerce state agents into implementing federal policy goals through the threat of federal preemption. The *Federal Hypothesis* argues that this decision regarding state discretion is critical for producing the potential for conflict under each institutional structure. Explicitly, the *Federal Hypothesis* states:

*Federal Hypothesis: Federal policy will encourage negative state response when a.) policy is designed to coerce state institutions to implement specific policy goals or to remove state control of policy entirely and/or b.) the national political parties have polarized around the issue and the federal policy lacks bi-partisan support.*

I argue that, until recently, the electoral incentives of national politicians have encouraged policies that reduced conflict with state agents. As the *Federal Hypothesis* suggests, policies that limit state discretion through federal coercion and centralized control of policy will produce negative state response, particularly when local policy preferences deviate from national policy goals. During the periods referred to as “dual” federalism and “cooperative” federalism, national politicians advocated for deference to the policy agendas of state politicians, particularly in the South, in order to avoid conflict produced by the significant variation in local preferences.

Further, I argue that the most recent period of “coercive” federalism is a direct product of the institutional changes associated with polarization and has produced the potential for state officials to be cross-pressured, by combining an emphasis on partisan resistance at the national level with an increased use of coercive national policy. The increase in national polarization has encouraged conflict between state and federal governments due to partisan identification, independent of policy content. For bi-partisan compromise to occur in spite of polarization, state partisans must experience cross-pressure from local constituents organized under the institution of American federalism that encourages them to challenge partisan allies in Washington. I argue that partisan polarization has produced the potential for this cross pressure. By encouraging national politicians to draw clearer distinctions between the policy goals of the two national parties, polarization encourages national politicians to employ coercive mechanisms at the state level in order to accomplish those policy goals. By increasing coercion, polarization satisfies both components of the *Federal Hypothesis* producing the potential for conflicts due to both American federalism and political parties. The increase in coercion associated with polarized federal policy places limits on state discretion, particularly among partisan allies, creating the potential for bi-partisan compromise with the states in spite of national polarization.

### **Institutional Structure and the History of Federalism**

#### ***“Dual” Federalism and the Argument for State Nullification***

Scholars consider the period referred to as ‘dual’ federalism, which arguably lasted from the ratification of the Constitution through the New Deal, to be an era in which the policy decisions of elected officials produced clear distinctions between the powers of state and federal governments. The role of the early federal government was small, reducing opportunities for conflict with the governments in the states. When the federal government did become involved

in policy that influenced the lives of citizens, they were regularly able to do so independent of the state governments. The expansion of federal territory, most notably through the Louisiana Purchase in 1803 and the 1848 Treaty of Guadalupe, enabled the federal government to distribute policy benefits directly to citizens and businesses. Legislation, like the 1862 Homestead Act and Pacific Railroad Act, carried favor with broader western constituencies by providing direct federal funding in the form of land to both individuals and corporations. Later, national politicians could also use federally funded positions, including local postmasters, to gain the electoral support of local organizers (Kernell and McDonald 1999). After the Civil War, Congress would use the veterans' pension system to provide direct patronage benefits to supporters in the Northeast, often independent of any role with the Union Army (Bensel 1990; Skocpol 2009).

By courting electoral support through the open-ended and individualistic benefits associated with patronage, federal politicians avoided the potential for conflict with state governments. First, by targeting benefits at individuals, the federal government could avoid exercising coercion on policies controlled by state agents. Further, while land policies directly aided individuals and businesses, other patronage policies during this era were directed towards individuals via state political parties, reducing conflict with state politicians (Kincaid 1992). Third, as Lowi argued, these distributive policies are highly individualized decisions that, "can be disaggregated into many millions of nickel-dime items and each item can be dealt with without regard to others" resulting in a "reduction of conflict" between partisans (Lowi 1964). Distributive benefits directed at citizens did not produce stark partisan division or polarization because politicians possessed little interest in contesting and eliminating patronage, but instead channeled their energy into joint credit claiming.



While the federal government expanded the use of patronage policies, state discretion within the realm of the police powers was preserved. President Wilson would later describe these powers as “all the legal choices that shape a people’s life”. For Wilson, this included:

“the regulation of domestic relations and of the relations between employer and employee, the determination of property rights and of the validity and enforcement of contracts, the definition of crimes and their punishments, the definition of the many and subtle rights and obligations which lie outside the fields of property and contract, the establishment of the laws of incorporation and of the rules governing the conduct of every kind of business” (W. Wilson 1908)

This notably included early public assistance programs, social welfare policy, and community regulation that were ignored by federal politicians and left to the states by default (Mettler 1998; Skocpol 2009). Politicians at the federal level possessed few electoral incentives to challenge state control of these police powers due to the presence of direct patronage policies.

While conflicts were reduced by the distinct policies adopted by state and federal agents, they were not eliminated and states occasionally moved to challenge the centralization of control of contested economic policy. These conflicts resulted in early national victories that expanded the potential for federal reach through a broad interpretation of the Supremacy Clause of the Constitution. In *McCulloch v. Maryland*, the federal government, in an effort to preserve its ability to charter banks, challenged a Maryland law taxing the federally chartered Bank of the United States. In his ruling, Chief Justice Marshall established his doctrine of constitutional supremacy by arguing that the Constitution derives its power not from the states but directly from the people, in whose name it was “ordained and established” (*McCulloch v. Maryland* 1819). Marshall extended the necessary and proper clause, arguing that:

“To impose on [the federal government] the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution” (*McCulloch v. Maryland* 1819).

By broadly interpreting the Constitution's Supremacy and Necessary and Proper Clauses the Court left the door open for more expansive federal capacity under the enumerated powers. Later, in *Gibbons v. Ogden* the court expanded the commerce clause to overturn a New York steamboat license that was in conflict with a similar federal license (*Gibbons v. Ogden* 1824). In resolving both cases, the court sought to establish the primacy of federal law over state law, when pursuing legislation that was "necessary and proper" to the fulfillment of the federal enumerated powers.

Other conflicts arose when state politicians challenged federal tariff policies, where centralized policy control created unique burdens for state constituents. John C. Calhoun penned the "South Carolina Exposition and Protest" to challenge the Tariff of 1828, which was signed into law during his vice presidency. For Calhoun, the potential for conflict between state and federal governments was rooted in the risk of a federal majority employing national power to benefit a minority of constituents. Calhoun argued that the tariff favored manufacturing interests in the northeast and placed an undue burden on Southern agricultural producers. He rejected the claim that the Supreme Court retains the power to adjudicate battles over federalism and instead argued that the Tenth Amendment and the ratification process within the Constitution positioned the states to challenge federal expansion. He claimed:

"The right of judging, in such cases, is an essential attribute of sovereignty, of which the States cannot be divested without losing their sovereignty itself, and being reduced to a subordinate corporate condition. But the existence of the right of judging of their powers, so clearly established from the sovereignty of States, as clearly implies a veto or control, within its limits, on the action of the General Government, on contested points of authority" (Calhoun 1828).

Calhoun's argument, colloquially known as state nullification, afforded states the right to veto laws contested under the Tenth Amendment that, in their opinion, unduly burdened the citizens

of that state. This claim laid the groundwork for state contestation of federal law due to conflict between national policy goals and the distinct constituent preferences within states.

The concept of state nullification was employed by states across the political spectrum to resist federal policy. Southern states regularly challenged tariffs that, from their perspective, placed an undue burden on the export-oriented economy surrounding plantation agriculture. Meanwhile, Northern abolitionists would employ nullification to counter federal fugitive slave laws in an attempt to undermine the institution of slavery. In both *Prigg v Pennsylvania* and *Ableman v Booth*, the Supreme Court overturned state efforts to nullify federal fugitive slave laws, relying again on the Supremacy Clause of the Constitution (*Ableman v. Booth* 1859; *Prigg v. Pennsylvania* 1842). The Civil War brought this conflict between state nullification and federal power to a head and the resulting Fourteenth Amendment expanded the potential for federal reach into new policy arenas.

Federal expansion after the Civil War benefitted from the Fourteenth Amendment but also continued to focus on control of commerce. After the Civil War, the Republican Party focused on the construction an integrated national market. In doing so, the negative power of the federal government was most keenly felt in the Supreme Court's ability to block state legislation that curtailed or regulated industry (Bensel 1990). Democrats engaged in the positive expansion of federal control of the economy through the Interstate Commerce Commission Act (1887) and the Sherman Anti-Trust Act (1890), which employed the commerce clause to extend the power of the federal government in regulating interstate businesses (Boyd 1995). By focusing on centralizing control of the national market, national politicians courted both a key business constituency that relied on fluid trade between the states and also citizen groups that were concerned with lax regulation.

While the twentieth century would see a significant expansion of the arenas in which the federal and state governments shared authority, the line between federal and state agents in the nineteenth century, while not well blended, was certainly not fixed. Supported by large land expansions and tariff incomes, federal politicians were able to establish early electoral support, independent of conflict with state politicians. Distributive policies directly benefitted constituents without coercing or removing policy control from state governments. Further, the direct benefits provided little incentive for drawing clear partisan distinctions. However, centralized control of economic policy by the national government, particularly federal tariff law, was perceived to unduly burden local interests creating opportunities for conflict produced by the institution of American federalism prompting states to respond with resistance and claims of nullification.

### ***The New Deal: From Deference to Coercion***

Elazar famously argued that the federal government of the nineteenth century functioned as a “servant to the states” in that it protected state interests by deferring to most internal state policy and employing the Commerce Clause to preserve the common market on behalf of the states (Elazar 1981). He argued that this negative approach to federalism shifted in 1912, when the national government began to actively support state policies (Elazar 1981). While many marked this as the beginning of what would be referred to as “cooperative” federalism, the transition was actually foreshadowed much earlier. The 1863 Morrill Act created a dramatic shift in education policy by providing thirty-thousand acres per congressional representative to states for the purposes of establishing agricultural and engineering colleges. By granting land directly to state agents, this policy marked a stark deviation from the homestead and railroad policies and

the veteran's pensions programs that provided resources directly to individuals and industries (Kincaid 1992).

The land grant bill possessed two critical qualities that were the core of federal expansion in the early twentieth century. First, it originated in a growing national demand that had shifted the electoral incentives of national politicians regarding education policy (Simon 1963). Secondly, while it restricted implementation to college-level agricultural education, it allowed states significant autonomy in implementing the grant (Elazar 1981; Simon 1963). The debates surrounding the Morrill Act were also portentous, with members of Congress consistently pushing for both more funding and more state discretion (Simon 1963). By combining federal wealth and state flexibility in response to a national policy demand, the Morrill Act both forecasted and embodied what would be later called 'cooperative federalism'.

The shifting electoral motivations of national politicians that motivated the rise of cooperative federalism were first recognized formally in the policies of Theodore Roosevelt and Woodrow Wilson. In his address to the citizens of Osawatimie, KS on August 31, 1910, President Roosevelt recognized the growing national discontent over corporate power and special interests in Washington. He argued that his "New Nationalism" had grown impatient with the "impotence, which springs from over division of governmental powers", allowing selfish interests to gridlock national issues. To solve this problem, Roosevelt advanced a more active federal government, arguing, "The National Government belongs to the whole American people and where the whole American people are interested, that interest can be guarded effectively only by the National Government" (Roosevelt 1910). Under Roosevelt's term in office, the federal government centralized policy control and restricted state implementation of federal

grants by incorporating significant policy requirements for participation in the Reclamation Act of 1902, the National Forest Service Act of 1905, and the Adams Act of 1906 (Staten 1993).

Wilson echoed Roosevelt's call for national stewardship, claiming that the Constitution established that "Congress shall have control only of such matters as concern the peace and the commerce of the country as a whole" (W. Wilson 1908). Empowered by the Sixteenth Amendment and the expansion of federal economic capacity through taxation, Congress under Wilson would extend the federal government into new policy arenas, particularly within the area of commercial regulation, which Wilson saw as core to the mission of the national government (W. Wilson 1908). However, unlike Roosevelt, Wilson was not an advocate for nationalization of policy control, arguing that Congress should act to "revitalize [federalism] by reorganization" and not centralization (W. Wilson 1908). Unlike the distributive land-grant policies of the nineteenth century, distributive and regulatory policies in the twentieth century would employ state agencies to direct resources to local needs. Under Wilson, national politicians responded to shifting constituent demands by adopting cooperative policies that provided grants to state agents (Boyd 1995; Elazar 1981; Kincaid 1992).

The economic crisis of the Great Depression spurred national politicians to further expand the federal government during the New Deal (Elazar 1981), where the seeds of conflict with the states would ultimately be sown. In establishing programs, New Deal Democrats allowed states significant latitude in implementing federal policy for a number of practical reasons, including increased cost-sharing, capitalizing on existing infrastructure and experience, and appeasing state political machines (Davies and Derthick 1997; Kincaid 1992). By deferring to the states and allowing politicians from both allied and rival parties to implement policy

according to local preferences, national politicians were able to avoid potential conflict with state governments.

However, the reliance on state agencies for federal programming resulted in disparate implementation patterns that reinforced racial segregation and traditional roles for women, ultimately jeopardizing policy delivery to historically marginalized populations (Kincaid 1992; Riker 1964; Soss, Fording, and Schram 2008; Volden 2004). Kincaid characterizes this as the high and low road of ‘cooperative’ federalism (Kincaid 1992). Suzanne Mettler argued that in implementing New Deal policy, state politicians appealed to their local constituents by generating “safe havens for community values, preserving local, ascriptive versions of the social order” (Mettler 1998, 7). Or as Riker bluntly stated, if “one approves of Southern white racists, then one should approve of American federalism” (Riker 1964, 155).

While deference to local goals during this period reduced conflict between national and state governments, it also enshrined ascriptive values into federal policy, producing lasting implications for marginalized groups. Mettler argued that decentralization during the New Deal resulted in significant divisions in policy effectiveness along gender lines, resulting in dual notions of citizenship. Nationally centralized policies that were administered under clear standards were primarily targeted to male breadwinners. Meanwhile, policies aimed at women were directed through the states, where state officials “scrutinized and supervised beneficiaries personal lives” resulting in locally driven notions of the “deserving poor” (Mettler 1998, 13). The reinforcement of ascriptive traditions was also keenly felt among African Americans. The decentralization of Aid to Dependent Children under the Social Security Act of 1935 led to extreme inequality along racial lines in the South, where blacks were excluded from the program (Lieberman and Lapinski 2001). Further, decentralized control of decisions related to housing,

exacerbated segregation problems already present in New Deal housing policy (Hirsch 2000; Kincaid 1992). In spite of the inequalities associated with state control, deference to states regarding major policy implementation continued to structure policy in the Eisenhower and Kennedy Administrations (Elazar 1981; Kincaid 1992).

Discontent over Southern Democrat's protection of segregation policies became a national concern as the Civil Rights Movement gained attention in the media, again shifting the electoral incentives of members of Congress. Arguably, the first major blow to the existing dynamic was the Supreme Court's ruling in *Brown v. Board of Education*, which desegregated public education (Brown v. Board of Education 1954). While the Court's decision increased federal coercion of state policy, it did not occur in a political void. Congressional conflict over segregation had been building for years and the Court's ruling built upon significant changes in federal law that enabled citizens to challenge state law regarding segregation (Farhang 2010). The subsequent years would see additional congressional challenges to the Southern Jim Crow regime from national politicians, including the 1964 Civil Rights Act and the 1965 Voting Rights Act. These changes encouraged a radical expansion of coercive federal policies into policy arenas historically controlled by the states.

Alongside the increased use of coercive policies by the federal government, the Johnson Administration instituted a corresponding new vision of federalism under the umbrella of his Great Society program. Johnson's "Creative Federalism" altered the priorities of cooperative federalism by reducing the prerogatives of state politicians and instead assigning policy implementation to local communities. Johnson summarized this, stating:

"The solution to these problems does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority. They require us to create new concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities" (Johnson 1964).



Creative federalism looked beyond state agents to “local communities” as key partners in cooperative federalism (Kincaid 1992). While still deferring to local preferences, the Johnson administration shifted the target to communities, thereby reducing the role of state political institutions. When engaging with state politicians, the Johnson administration expanded the use of coercive tactics including conditional grants (Boyd 1995; Elazar 1981; Fischman 2005).

Johnson’s shift under “Creative Federalism” built upon the shifting electoral motivations that produced Roosevelt’s New Nationalism and Wilson’s New Freedom programs, but did so in a decidedly more coercive way. Originally, New Deal policy provided aid to states and simultaneously deferred to local agendas, fusing federal power and local concerns in a way that mitigated the potential for conflict produced by local constituent preferences. However, as the economic pressures of the New Deal faded, this combination proved problematic. Local implementation and discretion contributed to the Jim Crow regime, ultimately compounding the effects of racial animus on policy implementation and enhancing economic disparities between racial and gender groups. The Johnson administration employed more coercive tactics, making federal aid contingent on national terms, and redirected funds to local politicians in an effort to reduce conflict with state agents. The increase in coercion directed at state governments expanded opportunities for conflict produced by distinct local interests under American federalism. However, the Democratic Johnson Administration’s decision to challenge the policies of Democratic partisan allies in the states had yet to produce polarized national conditions.

### ***Polarization and Partisan Distinctions***

Scholars argued that the 1960’s was a critical turning point in American federalism because the federal government shifted its role from serving the states to serving individuals and

coercing the states (Elazar 1981; Kincaid 1992). In response to the growing conflict between its Northern and Southern wings over segregation, the National Democratic Party abandoned the policy of deference to state implementation and increased the use of coercive policy designs. Federal delegation of authority and policy decentralization began to focus increasingly on individuals, with a decline in federal aid to states and an increase in aid directly to persons (Ann O'M Bowman and Pagano 1994; Kincaid 1992). When the states were involved, they still retained some discretion in selecting policy means but were limited to the ends established by Congress and the national executive (Ann O'M Bowman and Pagano 1994; Kincaid 1992). Consequently, this period saw an uptick in conditions on federal grants and growth of federal mandates (Ann O'M Bowman and Pagano 1994; T. J. Conlan and Posner 2011; Jennings and Hayes 2010; Kincaid 1992; SoRelle and Walker 2016; Zimmerman 2001). When states failed to meet the ends outline by federal politicians, they confronted the coercive threats of federal preemption and court mandates (Kincaid 1992; Zimmerman 2001).

However, when President Johnson adopted a coercive stance and signed the 1964 Civil Rights Act and the 1965 Voting Rights Act, he removed the potential for state partisan allies to address the divide between the national partisan agenda and local constituent preferences through negotiation. The subsequent conflict shifted the electoral motivations of federal politicians by creating an opportunity for the national Republican Party to court a disenchanted Southern constituency. Over the next thirty years, mostly white, Southern Democrats abandoned the party and joined the Republican coalition bringing partisan agendas into better alignment with state constituent preferences (Abramowitz and Knotts 2006; Petrocik 1987; Schlesinger 1985; Valentino and Sears 2005). The national Republican Party courted this new Southern constituency by rhetorically advocating for a policy of state's rights and devolution, particularly

under the Nixon and Reagan administrations and the Gingrich House (Abramowitz and Knotts 2006; Petrocik 1987; Sinclair 2014; Valentino and Sears 2005).

The growing literature of fiscal federalism provided theoretical justification for the devolution of previously controlled federal policy, by arguing that, “under multilevel government, each level is best suited to meet the needs of their respective constituencies” (Oates 2005). The theory of fiscal federalism argued that state and local officials were more responsive to market pressures from local businesses, and thus more suited to implement economic policy than their federal counterparts. Meanwhile, the federal government was more equipped to manage the negative externalities associated with redistributive policy (Oates 2005; Peterson 1995). Scholars argued that this distribution would increase government accountability for spending, while preserving civil liberties and preventing the overexpansion of the federal government (Inman and Rubinfeld 1997; Tommasi and Weinschelbaum 2007). Despite the continued increase in the use of coercive tactics at the national level, the Republican Party’s advocacy of devolution insured that states still retained discretion on policy well into the 1980s (Derthick 1987, 2004).

While fiscal federalism prioritized economically efficient decentralization, it was often criticized for removing the politics from American federalism (Oates 2005). In reality, electoral motivations encouraged national politicians to ignore economic efficiency in favor of the decentralization of unpopular policy, while retaining federal control of popular policies (Arnold 1990; Gamkhar and Pickerill 2011; Peterson 1995). While the Republican party under President Nixon began rhetorically advocating for decentralization through his “New Federalism” program, electoral motivations and not economic incentives regularly determined which policies would be decentralized (Elazar 1981). Nixon’s opportunism regarding devolution marked the tip

of the iceberg, with national control of policy steadily increasing since the 1970s, especially for more popular policies (Ann O'M Bowman and Krause 2003; Peterson 1996). Despite the rhetoric of efficiency and devolution, electoral considerations continued to structure decisions related to the distribution of power between federal and state governments (Anagnoson 1982; T. Conlan 2006; Inman 2003; Nicholson-Crotty 2008; Volden 2005, 2007).

The changes associated with the Southern shift to the Republican Party also resulted in an increase in the ideological distance between the parties in Congress, resulting in polarization and legislative gridlock (Binder 2003; Mann and Ornstein 2012; Poole and Rosenthal 2011). The shifting priorities of congressional politicians corresponded to a shift in the constituent preferences of core partisan supporters who became averse to cooperation with the rival party, driving the growth of negative partisanship (Abramowitz 2010; Abramowitz and Webster 2016; Lenz 2009; Sinclair 2014). The ideological distinction between the parties, coupled with electoral pressure to draw further distinctions due to increased competition for institutional control, resulted in an increase in polarization and patterns of partisan resistance at the national level. This polarization enhanced the electoral incentives of state politicians to challenge federal policy for purely partisan purposes.

Alongside creating opportunities for federal-state conflict due to the institution of political parties, polarization also expansion of the use of coercive policies. The extension of partisan conflict and polarization into the states has fostered an expectation that states that shared a common partisan identification with national politicians in power would also share the national partisan agenda and cooperate with federal policy. Consequentially, states controlled by rival partisans ought to cooperate only under coercion and the threat of federal preemption (Barrilleaux and Rainey 2014; Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014; Jones,

Bradley, and Oberlander 2014; Rabe 2008; Rigby and Haselswerdt 2013; SoRelle and Walker 2016). In other words, national politicians began to view relations with state governments through a polarized lens of with-us or against-us, and congressional majorities began decentralizing policy at higher rates when their party controlled more state institutions (Krause and Bowman 2005; McCann 2015, 2016).

This conflict was aided by the frequent inability of the federal government to enforce coercive policy due to a lack of political willpower, a lack of resources, or information asymmetries generated by state control of policies (Crotty 1987; Derthick 1987; Scicchitano and Hedge 1993; Squillace 1984; R. B. Stewart 1977; Zimmerman 2007). In reality, states retained the option to respond to national mandates via a multitude of policy tools that allow them to negotiate or resist federal involvement, resulting in significant variation in policy regimes (Bowling and Pickerill 2013). Referred to as “uncooperative” or “fractious” federalism, state-national conflict was fueled by state opposition to federal policy through negotiation, delay, grant refusal or redirection, and laws and litigation that challenge preemption or employ regulatory powers in ways that run counter to explicit national policy goals (Bowling and Pickerill 2013; Bulman-Pozen and Gerken 2009; Gamkhar and Pickerill 2012; Hedge, Scicchitano, and Metz 1991; Leonard 2011; E. A. Miller and Blanding 2012; Nicholson-Crotty 2004, 2012; Shelly 2008; Squillace 1984; Thompson and Gusmano 2014; Thompson and Scicchitano 1985; Zimmerman 2001).

The result of the increase in polarization is an expansion of potential causes for conflict between state and federal governments. The abandonment of policies of deference to state variation and the extension of national partisan conflict and polarized partisan resistance satisfies both requirements for conflict under the *Federal Hypothesis*. The result is that the institutions of

American federalism and political parties can both contribute to the electoral motivations of state politicians when responding to federal policy. Further national coercive policies have typically been unsuccessful in producing state compliance. Instead, national politicians continue to persuade state politicians to accomplish federal policy goals, by relying on either shared partisan identification or by emphasizing parallel constituent pressures (Ingram 1977; Manna 2006; Rosenthal 1980). The Supreme Court's recent ruling in *National Federation of Independent Business v. Sebelius* reinforced the potential for states to resist federal mandates (Copeland 2012). As Chief Justice Roberts argued, Congress in encouraging state adoption of policy cannot place "a gun to the head" of state agents to enforce compliance (*Nat. Fedn. of Indep. Business v. Sebelius* 2012). This has resulted in a move away from all-or-nothing policies and a push for renewed state discretion to account for local constituent policy goals (Scholz 1986; Sharkey 2008; Thompson and Gusmano 2014; Thompson and Scicchitano 1985; Woods 2008).

### **The Dynamics of Federalism and Electoral Motivation**

It was not until 1960 that Morton Grodzins challenged the notion of what he termed, "layer-cake" federalism, claiming:

"The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients. [...] As colors are mixed in the marble cake, so functions are mixed in the American federal system" (Grodzins 1960).

While the taxonomy of federalism has attempted to demarcate clear families and species by establishing boundaries around particular behaviors, beneath these conflicts lie the shifting electoral motivations of national and state politicians, which produce the constant marbling of American federalism. These electoral motivations are constrained by the layered institutions federalism and national political parties. This chapter evaluates this argument by briefly examining the history of American federalism that has given rise to the taxonomy of federalism

scholarship. I argued that shifts in the electoral motivations of national politicians have produced the distinct epochs of federalism highlighted within the existing literature.

During the period referred to as “dual” federalism, abundant federal land and tariff income provided critical resources to fuel the electoral motivations of national politicians. With little electoral incentive, national politicians left states free to develop social welfare policy and community standards according to local demands. This division of labor was only blurred when the national government chose to act on behalf of burgeoning inter-state businesses by suppressing efforts of individual states to curtail the open market. The ‘dual’ nature of this period is a direct product of the division of labor produced by the independent electoral motivations of state and federal politicians. The lack of centralized policy control reduced conflict due to local constituent preferences while the nascent partisan conflict was neither polarized nor had it fully extended into state politics.

The period known as “cooperative” federalism was born from the economic crisis of the New Deal, when the national government expanded to meet the shifting demands of constituents that were confronting economic crisis. In doing so, federal politicians opted to provide state agents significant latitude in implementing policies. This policy of deference to local interests was a direct product of the expansive New Deal Democratic coalition and ultimately reduced conflict between federal and state agents by allowing states to vary policy according to local preferences. However, the electoral motivations of national politicians shifted again as Northern voters turned against the Southern use of state discretion to expand Jim Crow segregation. This shift encouraged national politicians, particularly under the Johnson Administration, to abandon the *laissez faire* approach to federal funding and begin exerting more coercive power over the states. The expansion of coercive federal policy produced conflicts between state and federal

governments due to the significant variation in policy preferences between states. However, the conflict occurred predominantly within the Democratic Party, reducing the potential for conflict due to partisan distinctions.

This early growth of coercive policies again altered the electoral landscape by turning Southern voters away from the Democratic Party. Spurred by this opportunity, the Republican Party actively courted these voters by shifting the national partisan agenda to include state's rights and policy decentralization. As the South turned Republican, the resulting partisan realignment brought the parties more in line, producing an increase in partisan ideological distance within Congress. As Congress produced more ideologically driven policies, it produced a corresponding expectation that states controlled by rival partisans would resist these new, highly partisan federal policies. Federal decisions concerning decentralization and coercion took on a decidedly partisan hue, with national politicians avoiding decentralization when state institutions were in the hands of the rival party and adopting laws that pursued the national partisan agenda through coercive policies that threatened federal preemption.

This brief history reiterates federalism's constantly shifting, kaleidoscopic nature, against the backdrop of paradigmatic shifts brought about by changes in national policy. However, the role of electoral motivations only tells half of the story. By focusing on the institutional arrangements that have historically driven conflict between politicians, this history largely ignores the extensive role of the courts and the bureaucracy in shaping the contours of American federalism. Ultimately, the competing influence of political parties and American federalism cannot explain these outcomes. The courts have acted in dynamic ways to restructure the boundaries of national power, often independent of the goals and wishes of politicians. The failure of national politicians to employ the Marshall Supreme Court's rulings to expand federal



policy and the decision of the Warren Court to expand federal influence into the issue of civil rights represent a few of these critical junctures. Further, this history fails to account for the role of bureaucracies in shaping federalism, which has changed immensely with the expansion and professionalization of the federal bureaucracy over the last 200 years. Other institutional dynamics are clearly at play that have contributed to shaping federalism beyond the conflict between elected officials.

While this history fails to evaluate the outcomes of conflict, it does illustrate the institutional arrangements that produce the potential for conflict. During each epoch of federalism, national politicians altered their stance to the states by shifting between independent action, decentralization, or coercion in response to the shifting electoral opportunities and motivations. This chapter provides preliminary evidence that conflicts between politicians at the state and national level were introduced by these shifting electoral motivations. It also establishes the role of polarization in shaping potential conflict with the states. By combining coercive policy with an increase in emphasis on partisan resistance, the polarized political climate opens the door to conflict produced by both American federalism and national political parties. This combination of conflict creates the potential for cross-pressured states and the potential for bipartisan engagement in spite of polarization at the national level.

## CHAPTER 4

### CHOOSING PARTISAN GOALS OVER PUBLIC OPINION: POLARIZATION-DRIVEN CHANGES IN AMERICAN FEDERALISM

Partisan polarization has presented one of the most pressing challenges to American politics for the past 20 years as America's two national parties have become more unified in their policy stances and further distanced themselves from their political opposition (Lee 2016; Poole and Rosenthal 2011). Many have argued that this increased polarization has encouraged a rejection of compromise resulting in legislative gridlock (Binder 2003; Mann and Ornstein 2012). Policies that are adopted in spite of gridlock are frequently concealed in bureaucratic agencies, private entities, or through submersion in the tax code in order to obscure partisan cooperation (Arnold 1990; Mettler 2011). However, Congress has significant options when assigning policy implementation, whether or not the intent is to obscure.

The federal government also employs grants and mandates that decentralize policy implementation to states as an alternative to implementation by the national executive. I define decentralization of policy as the assignment of policy implementation to the states, regardless of the degree of coercion present in the law or the clarity of national policy goals. This can be juxtaposed against the nationalization of policy which assigns policy implementation to the federal executive under a variety of levels of coercion and specificity as well. Scholars have explained patterns in federal decentralization by highlighting the alternative electoral incentives that can encourage the nationalization of federal policy in the executive. They argue that the presence of public support for a policy can encourage nationalization of policy implementation, while a lack of unified public support can encourage decentralization (Arnold 1990; Volden 2005, 2007; Wright and others 1978). Alternatively, the risk associated with deviation from partisan-specific federal agendas can encourage Congress to assign implementation to federal

agencies when rival partisans control state governments. Scholars have shown that Congress is more willing to decentralize when partisan allies control state institutions (L. R. Jacobs and Skocpol 2014; Krause and Bowman 2005; McCann 2015, 2016). In each case, Congress can tailor policy to reduce the risks associated with state resistance due to either the constituent variation produced by American federalism or polarized partisan distinctions produced by national political parties.

As Chapter 3 illustrated, decentralization during the periods referred to as “dual” and “cooperative” federalism was characterized by the significant latitude afforded to state politicians when implementing federal policy in order to counter the potential for resistance due to variation in state constituent policy preferences. Further, with the growth of polarization, Congress has increasingly turned to more coercive federal policies in order to enforce core partisan agendas. However, the growth in national partisan resistance associated with polarization has increased the potential for conflict due to the variation in partisan identification produced by the institution of national political parties. In this chapter, I argue that the increased potential for partisan-oriented state resistance due to national polarization has motivated national politicians to decentralize policy implementation to state agents at higher rates when partisan allies control state institutions.

In evaluating the rate of decentralization of federal spending using federal budget data from 1953-2014, I find evidence supporting both mechanisms for explaining decentralization. I find that an increase in national public support for national involvement corresponds to a reduction in the proportion of grant funding directed to the states. Additionally, an increase in the number of state institutions that share a partisan label with the majority party in Congress corresponds to an increase in funding directed to states, for non-defense, non-individual

spending. However, increases in polarization strengthen the relationship between spending decentralization and the presence of partisan allies in state governments.

These results provide some evidence that the modern era and the corresponding increase in polarization has encouraged Congress to avoid conflict with state agents by assigning implementation to partisan allies. However, as Chapter 3 illustrates, polarization also encouraged more coercive policies that establish strict policy requirements and reduce the potential for state governments to tailor policy to variation in state preferences. Thus, while the coercive policies associated with polarization create the potential for conflict due to variation in local constituent pressures, partisan oriented decentralization increases the likelihood for that conflict to occur within the national majority party. By decentralizing coercive policy to partisan allies, Congress reduces the likelihood of partisan-driven state resistance but enhances the potential for cross-pressured states to engage in cooperative behavior with partisan rivals.

### **Competing Explanations of Congressional Decentralization**

Scholars argue that variation in Congressional assignment of policy implementation within the administrative state is often a product of both popular support for the agency and shared partisan agendas (Carpenter 2010; Epstein and O'Halloran 1999; Huber and Shipan 2002). State governments remain a significant alternative for Congress when selecting venues for policy implementation. Decentralization of federal policy occurs when the federal government assigns policy implementation to the states through the use of grants or mandates that encourage the adoption and implementation of policies. However, when decentralizing policy implementation, Congress confronts additional complications. Constitutional limitations to federal authority can restrict congressional involvement in a policy, while policy path dependence may require the federal government to cooperate with states in order to "borrow"

strength (Manna 2006). However, the limitations of American federalism are far from set in stone. The expanding use of the Commerce Clause and the growing monetary demands of governing have increased the presence of federal law within the everyday lives of Americans. Thus, while Congress is dependent on the state in many ways, so too are the states dependent on Congress. The result is a constantly shifting field of power, where decisions concerning decentralization are dynamic. Zimmerman captures this shifting in his theory of “kaleidoscopic federalism”, arguing:

“The nuances of complex national–state relations can be explained by a nonequilibrium theory viewing the federal system through a kaleidoscope whose revolving reveals a continuous metamorphosis of the political landscape with each piece of colored glass reflecting the changing numbers and types of preemption statutes containing mandates, restraints, opt-in and opt-out provisions; intertwining of national and state powers; conditional block and categorical grants-in-aid; cross-cutting and cross-over sanctions; tax sanctions; administrative cooperation; and occasional preemption relief and congressional devolution of legislative powers to state legislatures, limited executive and administrative powers to governors affecting the gubernatorial-legislative balance of powers, and limited enforcement powers to state attorneys general.” (Zimmerman 2007)

Explaining when the federal government has opted to decentralize federal policy has long been the challenge of understanding the beginnings of conflict in American federalism. Fiscal federalism has approached the decision of decentralization as a product of pure economic efficiency, arguing that each level of government is designed to be responsive to the needs of their specific constituency (Oates 2005). Peterson refers to this as the functional distribution of federalism, where redistributive policies that are national in scope are reserved for centralized implementation while economic, distributive policies that impact local businesses should be decentralized (Peterson 1995). However, this purely economic approach to American federalism has been criticized for removing the politics from the decisions associated with decentralization.

One method for returning politics to the study of decentralization is to examine partisan priorities with regard to decentralization. While some argue that the post New Deal Democratic

Party has turned to nationalization and the Republican Party has become the advocate of decentralization (Ann O'M Bowman and Pagano 1994; Palmer and Pattakos 1985), other scholars have challenged this partisan-driven explanation, emphasizing the bi-partisan support for many major shifts in federalism (Wallin 1998). Others have highlighted the use of decentralization by both parties, citing the left's new progressive federalism and the increasing cross-partisan use of coercive tools, like policy floors and ceilings (T. J. Conlan and Posner 2016; Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014; Jennings and Hayes 2010; SoRelle and Walker 2016). Empirical examinations of the impact of partisan control have offered mixed results, leaving the question of partisan inclinations open (Krause and Bowman 2005; McCann 2015; Nicholson-Crotty 2008).

Second generation fiscal federalism has also made an effort to understand the political motivations for decentralization by incorporating principal-agent problems both between elected officials and constituents and between levels of government (Inman 2003; Inman and Rubinfeld 1997; Oates 2005; Tommasi and Weinschelbaum 2007). Scholars have approached the constituent-official principal-agent link by arguing that Congress will respond to shifting national public opinion when making decisions on decentralization in an effort to claim credit for popular policies and avoid blame for unpopular policies (Arnold 1990; Peterson 1995; Volden 2005). Public opinion and elections have been shown to alter support for specific policies including General Revenue Sharing and the use of unfunded mandates (Nicholson-Crotty 2008; Wright and others 1978). By shifting between decentralization and nationalization or centralization of policy according to public support for federal expansion, national politicians hope to maximize electoral support and avoid claims of federal overreach.

Volden effectively incorporates this mechanism within a game theory model for policy decentralization. He argues that the decentralization of policy implementation is a product of the competition between federal and state agents for service delivery efficiency, tax efficiency, and public demand for the policy (Volden 2005, 2007). Volden's model also recognizes the potential for high levels of variation in public demand for a policy between states. He finds Congress will assign implementation to the federal executive when state preferences are consistent and assign implementation to the states when state preferences are more diverse (Volden 2005). Consequentially, joint policy provision, or "cooperative" federalism, occurs when the national government confronts more efficient taxation, but states control more efficient distribution systems and demand between states is diverse (Volden 2007).

Arguments concerning the principal-agent dynamic between federal and state agents often focus on the existence of shared partisan agendas between national and state politicians. As the assigning principal, Congress seeks to enforce partisan-specific policy goals on state agents. However, state agents possess significant latitude in responding to federal grants and mandates, especially when they intrude on constitutionally protected state-policy arenas, resulting in "fragmented" federalism and variation in state response (Bowling and Pickerill 2013; Dinan 2008; Marmor and Oberlander 2011; Nicholson-Crotty 2012; Sapat 2004). Scholars argue that partisan control of state institutions provides a solution to the information asymmetries associated with agent discretion. Using a dataset of 495 laws compiled from 1947-1998, Krause and Bowman find that the majority party in Congress decentralizes policy at higher rates when state institutions are controlled by partisan allies (Krause and Bowman 2005). Further, using an individual level analysis of congressional votes on 197 laws from 1973-2010, Clouser McCann finds that members of Congress are more likely to decentralize policy when they are members of

the same party as their state's governor (McCann 2015). By shifting allocation of policy implementation in response to changes in state partisan control, congressional actors attempt to prevent deviation from partisan goals during the implementation process.

While broad popular support and allied partisan control of state institutions offer alternative explanations for variation in decentralization, they are not incompatible. When possible, parties pursue both general and partisan agendas simultaneously and increase their potential for election. However, understanding the dynamic allocation of policy decentralization as a product of both of these considerations demands an understanding of the critical role of polarization in shifting congressional priorities.

### **Dynamic Decentralization and Polarization**

In order to empirically assess the validity of these alternative explanations, I begin with the assumption that an increase in salience and public concern for particular issues will encourage congressional majorities to enact policy changes in response to those concerns (Ansolabehere and Iyengar 1994; Sigelman and Buell 2004). I assume that in spite of constitutional limitations and existing policy inertia, Congress still retains some discretion on how to structure that action, either assigning funding to national executives or state agents. When advancing a particular distribution of power between federal and state agents, congressional majorities should be aware of the electoral repercussions produced by different policy alternatives (Aldrich 1995; Downs 1957; Volden 2007).

While electoral motivations can encourage federal expansion into new policy arenas, I argue that the decision to nationalize or decentralize a policy is a product of the institutional structures that condition the potential for conflict with state agents. National politicians will be averse to conflict with state agents due to the potential for conflict to undermine critical policy



goals. As the *Federal Hypothesis* suggests, coercive federal policies can encourage conflict produced through the institutions of American federalism, while congressional polarization around a policy can produce conflict due to the institution of national political parties. Thus, disputes between national and state agents are a product of either the federal centralization of policy goals creating a gap between national policy and local preferences or national polarization, which makes the distinctions between rival state and national parties salient.

The existing literature on patterns in policy decentralization provide two potential mechanisms for reducing conflict according to each of these institutional arrangements. When congressional patterns in decentralization respond to shifts in public support for policy, they are attempting to reduce the potential for conflict produced by variation in state constituent preferences. National politicians will decentralize policy implementation when public support for national involvement on a policy is low and constituent preferences are diverse (Arnold 1990; Mettler 2011; Volden 2005). Alternatively, higher levels of public support indicate more unified constituent preferences and can encourage nationalization of policy. Congress can also attempt to resolve the principle-agent problems associated with decentralization by nationalizing policy when states are controlled by rival partisans, reducing the potential for conflict produced by the institution of political parties (Krause and Bowman 2005; McCann 2016). The expectation is that national politicians will assign funding and policy implementation to state governments when a higher proportion of state institutions share a partisan label with the congressional majority.

The key variable adjudicating between these competing alternatives is the perceived risk of conflict due to each institution. The increase in national polarization encouraged stronger partisan policy distinctions and an increasing ideological gap between the national Republican and Democratic Parties (Abramowitz 2010; Abramowitz and Webster 2016; Sinclair 2014). As

Chapter 3 argued, the increase in federal coercion is a direct response to the significant variation in state preferences associated with more ideologically extreme federal policies. As a result, Congress has defaulted to the expanded the use of coercion to enforce partisan policy goals and prevent state deviation. However, the growth of polarization has also increased the potential for conflict due to partisan identification, independent of policy positions. This amplifies the risk of resistance from states controlled by the rival party. As a result, polarization should encourage Congress to increasingly rely on partisan control of state institutions, as opposed to national public support, when choosing to decentralize policy to state agents. The result is that state implementation of more coercive policies is frequently assigned to partisan allies.

## **Methods**

This chapter will test the relationship between decentralization of public policy and public opinion, the presence of partisan allies in state institutions, and polarization. Existing measures of decentralization have focused on carefully coded collections of major legislation (Ann O'M Bowman and Krause 2003; Krause and Bowman 2005; McCann 2015, 2016) which may miss incremental change to existing policies. To better capture incremental change, I measure congressional preferences for decentralization by using the Office of Management and Budget, Historical Budget Tables, which have data available from 1953-2014, to calculate the percentage of federal outlays that are a product of grants to state and local government. This ratio will be used as the dependent variable in the analysis. Overcoming some preliminary problems with this measure requires making a few critical assumptions. First, this measure fails to assess the degree to which the federal government establishes policy control through restrictions on the use of grants. While the policy requirements associated with federal funding can certainly function to centralize policy control, the potential for conflict over decentralized funding,

independent of the requirements attached, is preserved by the impressive ability of state's to resist federal grant requirements and negotiate state-specific policy designs (Bulman-Pozen and Gerken 2009; Gamkhar and Pickerill 2011, 2012; E. A. Miller and Blanding 2012; Nicholson-Crotty 2004, 2012). Further, I am directly concerned with patterns in decentralization independent of the degree of coercion insofar as decentralization is critical for the potential for conflict. In addition, this measure fails to account for executive discretion, as opposed to congressional goals, in allocating funding to states. However, as Congress retains the power of the purse, I rely on the assumption that they should be able to restrict executive funding when they wish to alter the ratio of grants to state agents.

The benefits of this measure outweigh the required assumptions listed above. First, this measure provides a longer time-series (1953-2014) than measures of legislation, thus more readily accounting for shifting polarization levels. Second, it measures incremental change that systematic analysis of major legislation may miss. Finally, the federal budget tables provide critical distinctions in spending that allow different types of policies to be analyzed separately. Specifically, I analyze only general, non-defense federal outlays by removing defense spending and payments to individuals. The main goals are to distinguish the effects of public opinion and partisan control on policies from other factors that may drive variation in federal spending. Defense spending occurs largely in response to international conflicts and ought not to exhibit changes due to shifts in public opinion, partisan control and polarization. Further, spending on individuals, including Social Security and Medicare spending, may be driven by demographic and economic shifts. Finally this distinction preserves the critical policy distinction between redistributive policy and economic or distributive policy core to understanding fiscal federalism (Campbell 2002; Lowi 1964; Oates 2005; Peterson 1995). A comparable analysis of federal

grants to state agents for spending on individuals can be found in Appendix A and validates these concerns. I also produce separate models using distinct dependent variables for federal decentralization in specific policy arenas, including agriculture, natural resources, transportation, education and social services, healthcare and criminal justice. This controls for the effects of shifts in public demand in policy arenas like education, where Congress is more compelled to provide grants due to constitutional restrictions, which could skew the aggregate measure.

Key independent variables in the model include public opinion, partisan control of state institutions and Congressional polarization. I measure public opinion using Erikson, MacKuen and Stimson's aggregated measures of national public policy mood (Erikson, MacKuen, and Stimson 2002). Policy mood aggregates survey questions on key public policies and compiles them into a score ranging from conservative (0) to liberal (100), with liberal scores indicating support for larger national government (Erikson, MacKuen, and Stimson 2002). I lag the measure by one year in an effort to resolve problems of causality associated with the concurrent effects of budget changes on public opinion (Kriner and Reeves 2012). Scores that approach the liberal dimension (100) indicate increased support for expanded national involvement and should encourage lower ratios of grants to states.

Partisan control of state institutions relative to the majority party in Washington is measured as the percentage of major state institutions (Governor and both chambers of the legislature) that are controlled by the same party as the national House and the Senate. Federal divided legislature always corresponds to a score a 50% due to the two-party nature of state and federal institutions. Under a unified Congress, the measure assesses the degree to which a Congressional majority confronts partisan rivals in control of state institutions. Allied control of state institutions ranges from 34% in 1970 to 74% in 1997 and 1998 and is not correlated with

either partisan polarization or year. Higher percentages of state institutions controlled by partisan allies should result in higher ratios of grants to state agents due to the reduced risk of partisan-oriented state resistance.

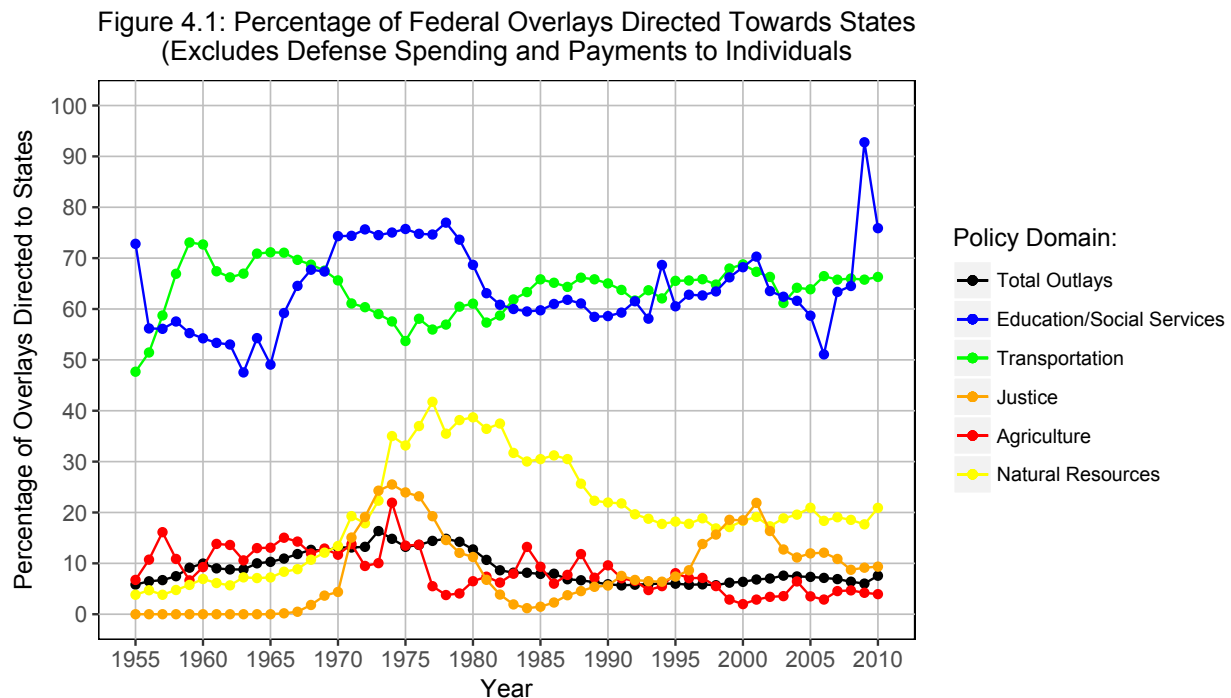
Congressional polarization scores are measured using the first dimension DW-NOMINATE score, calculated by Poole and Rosenthal (Poole and Rosenthal 2011). I use the difference in party means averaged across both chambers of Congress. While polarization is also associated with increasing partisan homogeneity, or a decrease in the variance around a party's mean DW-NOMINATE score, the distance between party means and the individual party variances are directly correlated and interrelated, making only one measure necessary. To assess the effect of congressional polarization on my measures of public opinion and partisan control of state institutions I use interaction terms within the model. Increases in polarization should increase the impact of partisan control of state institutions.

I control for the party of the national executive using a binary variable where 1 indicates unified partisan government among both chambers of Congress and the President. Shared partisan control of all national institutions may encourage lower levels of grants to state agents due to the presence of a common partisan agenda between Congress and the President. Finally, a categorical variable for the number of congressional chambers under Democratic control (0,1,2) was included to account for potential inherent partisan preference towards decentralization. All models use Ordinary Least Squares (OLS) and variables used in interaction effects, including policy mood, polarization and Congress-State partisan agreement, are centered to allow for easy interpretation. Diagnostics for all models revealed varying levels of autocorrelation and violations of the assumption of non-constant error variance so Newey-West HAC corrected

standard errors were used to correct for auto-correlation with appropriate lags within the model (Newey and West 1987, 1994).

## Results

Figure 4.1 plots the dependent variable, or the ratio of federal outlays that are a product of grants to state and local governments, for the various policy groups.



Source: Office of Management and Budget, Historical Budget Tables,  
Non-Individual, Non-Defense grant ratio calculated using Table 6-1, Row 10/Row 14.  
Policy specific grant ratios calculated using Table 12-2 and Table 3-1.

The percentage of outlays directed to the states through grants for agricultural, natural resources and criminal justice policies are consistently low, indicating a higher degree of centralized federal spending. The annual variation for all three of these policy arenas is correlated with the annual variation in the percentage of general funding grants to state agents. Transportation and education and social services possess consistently high percentages of grant funding due to constitutional restrictions and are uncorrelated with variation in the ratio of general grants. There

is still significant annual variation within these two groups, with the percentage of grants ranging from fifty to eighty percent of outlays.

### **Payments to Individuals vs General Spending:**

Table 4.1 presents the results of an OLS model, where the dependent variable is measured as the proportion federal outlays directed to the states, excluding defense spending and payments to individuals. The standard errors are calculated using the appropriate Newey-West HAC correction to account for heteroskedasticity and autocorrelation (Newey and West 1987, 1994).

**Table 4.1: OLS Model for the Ratio of Federal Spending  
Allotted to the States through Grants**

	Model 1: General Spending
Intercept	2.41 (1.01)*
Policy Mood (Lagged 1 year)	-0.25 (0.07)*
Polarization (DW Nominate Party Difference)	-0.82 (2.43)
Divided Legislature	5.67 (1.31)*
Democratic 2 Chamber Control	7.45 (1.49)*
Unified Government (With President)	1.17 (1.03)
Congress-State Partisan Agreement	0.14 (0.06)*
Policy Mood * Polarization	0.59 (0.41)
Congress-State Agreement * Polarization	0.76 (0.27)*
Adjusted R-Squared	0.43
Years (N)	1953-2014
Note: Table entries are OLS regression coefficients, estimated standard errors in parentheses, *p<.05 two-tailed	

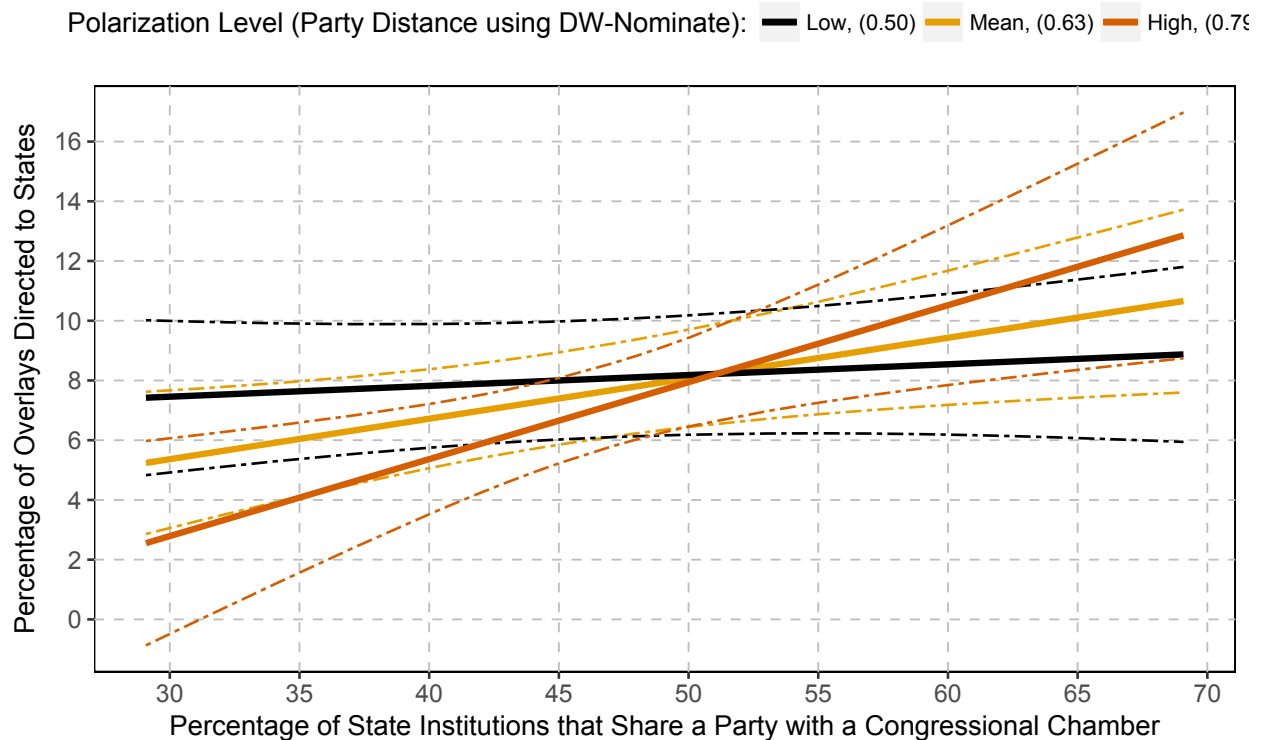
The negative coefficient for policy mood and the positive coefficient for Congress-state partisan agreement validate the existing literature on patterns in decentralization. As support for large national government increases there is a corresponding decline in the percentage of federal outlays directed to the states by around 1% for a single standard deviation (4.2%) shift of policy

mood. Conversely, as Congress finds more partisan allies in power in state government, there is a corresponding increase in the percentage of federal outlays directed to the states by around 1.3% for a one standard deviation (10% or roughly 30 state institutions) increase in state institutions controlled by partisan allies. Both effects are statistically significant at the 0.05 level.

The statistically significant positive coefficient for the interaction term that includes state partisan control and polarization indicates a relationship between polarization and the impact of state partisan control. While polarization alone fails to achieve statistical significance, increases in polarization correspond to an increase in the impact of partisan control of state institutions on patterns in decentralization. Figure 4.2 plots the model predicted percentage of grants against the percentage of state institutions controlled by allied partisans under different polarization scenarios.



Figure 4.2: Predicted State Directed Spending vs. Congress-State Partisan Agreement  
(Under Different Polarization Scores)



Source: Author's Calculations using Regression Results from Table 1, Model 1.  
95% confidence interval shown with dashed lines.  
Other variables held at means with Congress control held at divided government.

As the figure illustrates, as polarization moves from low scores (first dimension DW-NOMINATE difference of 0.5) to high scores, (first dimension DW-NOMINATE difference of 0.8) the slope associated with partisan control of state institutions increase. In other words, increases in polarization correspond to a greater congressional emphasis on partisan control of state institutions when choosing to assign policy to state agents. As polarization shifts, the proportion of grants to state agents dramatically increases with a one standard deviation shift in polarization doubling the proportional increase in grants to the states (1.3% to 2.6%) per one standard deviation increase in the percentage of state institutions controlled by partisan allies. The positive sign on the policy mood-polarization interaction indicates an inverse relationship,

where the impact of public opinion declines under polarized conditions, though it fails to achieve statistical significance.

### **Grant Allocation by Policy Arena:**

The above model reveals that for general spending, excluding defense spending and payments to individuals, the allocation of grants to state agents corresponds to shifts in public opinion and partisan control of state institutions in expected ways. Increased support for nationalization corresponded with lower ratios of grants to the states and increased proportion of state institutions under the control of partisan allies corresponded to an increase in the proportion of grants to the states. The latter effect is magnified under polarization, where, as I argue, partisan distinctions and national partisan resistance increase the risks associated with resistance from rival partisans in the states. However, by aggregating spending into broad measures, these models may fail to capture variation in grants produced by shifts in public demand for policies that are classically controlled by state agents. In order to resolve this issue, I repeat the model using the percentage of outlays directed to federal grants within specific policy arenas.

Table 4.2 presents the results for five models, where the dependent variables is the percentage of outlays directed to states via grants within the policy arenas of agriculture, natural resources, transportation, education and social services, and criminal justice. Policy arenas were selected from available data from the Office of Management and Budget function categorization in Historical Tables 12-2 and 3-1. Energy spending was dropped from the analysis because of the reduction in modern outlays associated with income from energy sales, while health spending was dropped from analysis due to a lack of annual variation .

**Table 4.2: OLS Model for the Ratio of Federal Spending Allotted to the States through Grants, within Policy Arenas**

	Model 1:	Model 2:	Model 3:	Model 4:	Model 5:
	Agricultural Spending	Natural Resources	Transportation	Education/Social Services	Criminal Justice
Intercept	7.78 (2.82)*	-2.77 (6.23)	58.71 (3.13)*	70.71 (5.87)*	2.18 (4.89)
Policy Mood (Lagged 1 year)	0.1 (0.18)	-1.26 (0.61)*	0.17 (0.23)	-1.33 (0.28)*	-0.5 (0.27)
Polarization (DW Nominate Party Difference)	-15.09 (2.83)*	31.8 (23.02)	17.81 (7.85)*	34.01 (7.25)*	29.91 (7.48)*
Divided Legislature	0.61 (2.97)	26.1 (6.39)*	5.82 (3.42)	-14.12 (6.88)*	1.23 (5.45)
Democratic 2 Chamber Control	1.09 (3.8)	26.7 (7.53)*	5.08 (3.53)	-1.64 (5.61)	11.14 (6.42)
Unified Government (With President)	-0.68 (1.89)	-0.8 (4.7)	2.51 (2.55)	-2.12 (3.48)	-4.02 (4.11)
% State Institutions Controlled by Partisan Allies	-0.04 (0.1)	0.68 (0.3)*	0.01 (0.14)	-0.39 (0.22)	0.45 (0.21)*
Policy Mood * Polarization	-0.9 (0.66)	3.79 (3.16)	-3.66 (0.83)*	1.98 (1.29)	2.14 (2.15)
% State Institutions * Polarization	0.18 (0.34)	2.53 (1.54)	1.1 (0.4)*	-3.24 (0.67)*	1.98 (0.39)*
Adjusted R-Squared	0.46	0.38	0.43	0.49	0.36
Years	1953-2014	1953-2014	1953-2014	1953-2014	1953-2014
Note: Table entries are OLS regression coefficients, Newey-West HAC corrected estimated standard errors in parentheses, *p<.05 two-tailed					

The results for specific policy arenas are more divided than the results when examining general federal outlays. Spending on agriculture and transportation under moderate levels of polarization appears largely immune to shifts in either public opinion or state level partisan control. Natural resources and educational/social spending, however, are associated with changes in public support for government measured as policy mood. Shifts in policy mood in the liberal direction, indicating increased support for national government, correspond to a decline in the proportion of grants to the states. In other words, as public opinion becomes more consistent concerning these policies, the national government is more willing to centralize spending in the national government. In both cases, a one standard deviation shift in policy mood towards the liberal direction corresponds to a decline in the proportion of grants by around 5%. Alternatively, an increase in the percentage of partisan allies in control of state institutions corresponds to an increase in grants to the states within the policy arenas of natural resource and criminal justice spending. A one standard deviation shift in shared partisan control corresponds to a 7% increase in grants for natural resources and a 4% increase in grants for criminal justice spending.

The results regarding polarization are also less clear under specific policy domains. Polarization has a direct and statistically significant impact on many specific policy arenas,

encouraging increased decentralization, independent of Congress-state partisan alignment. A one standard deviation increase in political polarization corresponds to an increase in the allocation of grants to state agents by 3% for transportation policy, 5% for criminal justice policy and 6% for education and social service policies. Agricultural spending is the only policy arena to illustrate an inverse relationship with an increase in polarization resulting in a 2% decrease in state grants for a one standard deviation shift.

Criminal justice policy provides the only evidence for shifts in congressional motivation in relationship to increasing polarization. A one standard deviation shift in polarization doubles the impact of state partisan control, moving from a 4% to an 8% increase in criminal justice grants per standard deviation increase in the percentage of state institutions controlled by partisan allies. In addition, under more polarized conditions, transportation funding begins to behave in expected ways. A one standard deviation increase in polarization exhibits a corresponding increase in decentralization by 2% per one standard deviation increase in the percentage of state institutions controlled by partisan allies. A one standard deviation increase in polarization also decreases the ratio of grants to state agents by 2% per one standard deviation shift in policy mood in the liberal direction. This may be due to the national polarization around the size of federal and state budgets, of which transportation funding remains a critical component. Finally, while polarization amplifies the impact of partisan alignment on education and social services spending, it does so in a counter-intuitive direction, driving a decline in the allocation of funding to the states. This significant variation in the nuances of policy specific spending is likely a product of unique patterns of contestation within these policy arenas.

## Discussion

While chapter three establishes the potential for conflict between coercive federal policies and the significant variation in local constituent preferences, chapter four moves beyond that to evaluate the potential for these pressures to produce bi-partisan cooperation between state and federal agents. This is rooted in the impact of polarization on congressional decisions concerning when to decentralize federal policy for state implementation. Current literature posits two alternative explanations for patterns in decentralization, changes in public opinion and the presence of partisan allies in state institutions.

In adjudicating between these competing alternatives, this study finds evidence for both public opinion driven models (Volden 2005; Wright and others 1978) and partisan alignment models (Krause and Bowman 2005; McCann 2015). For federal spending, excluding defense spending and payments to individuals, the percentage of federal funding assigned to state agents through grants shifts in response to public opinion and partisan alignment in expected ways. Stronger support for national policy corresponds to a decline in the proportion of grants while a higher percentage of states under the control of partisan allies corresponds to an increase in grants. These shifts represent a sizeable portion of federal budget funding. In terms of the 2014 budget, a one standard deviation shift in policy mood the liberal direction corresponds to a decline in state allocated federal funding by \$29 billion. Further a one standard deviation increase in state institutions under the control of partisan allows corresponds to a \$38 billion increase in grants. These effects are echoed and even magnified in the policy arenas. Shifts in the ratio of grants for natural resources and education and social services policy correspond to changes in public opinion, while changes in state allocations for natural resources and criminal justice policies correspond to shifts in partisan control of state institutions. The cost associated

with these shifts represent sizable portions of the budget and can directly impact state delivery of goods and services.

While both popular support and partisan concerns appear associated with patterns in decentralization, the models provide evidence that polarization has may have shifted the balance between these concerns. Polarization has made concerns of state level resistance due to partisanship more realistic as patterns of partisan resistance trickle down into the states. As the parties become increasingly divided, Congress becomes increasingly concerned that rival partisans in control of state institutions will resist, alter, or negotiate policy goals when granted the opportunity. The increased emphasis on the presence of partisan allies in state governments attempts to address this increased risk of resistance. For aggregate federal spending, a one standard deviation increase in polarization nearly doubles the rate at which Congress decentralizes funding due to allied partisan control of state institutions. In terms of real dollars, a one standard deviation increase in polarization results in shift from a \$38 billion increase in grants per standard deviation increase in partisan alignment to a \$73 billion increase in grants. The similar effect for criminal justice policy is likely a product of the significant partisan divide in criminal justice agendas, both in regard to incarceration (D. Jacobs and Helms 1996, 2001; Smith 2004), and community-police relations (Neal 2017).

The higher rates of decentralization for transportation, criminal justice, and education and social services policy under higher levels of polarization is likely a product of the increase in coercive decentralization of federal policy and the use of policy floors and ceilings to allow like-minded states to capitalize on discretion while limiting political opposition through the threat of preemption (T. J. Conlan and Posner 2011; Freeman and Rogers 2007; SoRelle and Walker 2016). However, the limitations on the federal government in enforcing these policy constraints

are well documented (Derthick 1970; Manna 2006; Scicchitano and Hedge 1993; Zimmerman 2001). Further the potential for state resistance to federal implementation requirements was greatly expanded by the Supreme Court in 2012 *National Federation of Independent Businesses v. Sebelius*.

The historical reality of polarization as a uniquely modern phenomenon within the data, while statistically problematic, helps to support the substantial theory of what is occurring. The increase in polarization culminating in a break over the data's mean of 0.63 after 1991 represents a phenomenon that has deep historical roots that in both the Reagan presidency and the Gingrich House. All three events were produced by two critical circumstances that increased the partisan divide. First, shifts in the policy positions of the national Democratic Party, particularly its advocacy of desegregation with the 1964 Civil Rights Act and 1965 Voting Rights Act, encouraged a partisan realignment throughout the South, with Southern Democrats abandoning the party over the next thirty years and joining the Republican coalition (Abramowitz and Knotts 2006; Valentino and Sears 2005). This brought the partisan agendas into better alignment, creating more distinct and homogenous parties by aligning ideological, religious and racial conservative voting blocks resulting in new Republican safe districts in the South (Petrocik 1987; Schlesinger 1985). Secondly, the shifts in primary elections as a result of the 1972 McGovern-Fraser Commission resulted in a more publicly responsive primary system, making candidates more accountable to key primary constituencies for early wins (Pressman and Sullivan 1974; Schlesinger 1985). This shift continued into the general election, with partisans increasingly focusing campaigns on the mobilization of core supporters over median voters (Holbrook and McClurg 2005; Sinclair 2014). Within the chambers of Congress, this trend manifested itself as a decline in moderate members and a corresponding increase in polarization

scores. Decentralization, coupled with policy floors and ceilings to check states controlled by rival parties, became the hallmark federalism design under polarization because it created avenues for stable partisan implementation in like-minded states while restricting resistance.

However, the simultaneity of polarization and decision-making presents a problem for endogeneity within the model. Budgetary decisions within each Congress are a direct product of the negotiations of members of that Congress and the effects of polarization must be considered simultaneously with the decisions being made. This simultaneity may imply reverse causality, with declining budgets and increasing decentralization translating into heightened polarization as a result of competition over scarce resources. However, two dynamics counter this interpretation. First, the preferences of congressional delegations and parties are in part exogenous to the congressional debates, decided in large part by electoral outcomes and incoming partisan composition. Secondly, an increase in decentralization should cause a decline in national polarization as a result of shifting the power to more diverse constituencies. Decentralizing policy implementation to states reduces the likelihood of reducing variation in partisan preferences to a single dimension by increasing variation through the incorporation of unique geographic constituencies. While polarized congressional delegations may be predominantly elected from safe partisan districts, decentralization places implementation into the hands of potentially more moderate partisan constituencies, increasing the potential for in-party resistance to national agendas. Further, the Supreme Court is regularly willing to step in and preserve the autonomy of the states, as was the case with Medicaid expansion under the 2010 Affordable Care Act.

This study provides evidence that polarization correlates with changes in how Congress decides when to decentralize policy. Polarization has encouraged patterns in decentralization that



increasingly attempt to counter state resistance along purely partisan lines. By decentralizing policy at higher rates when partisan allies control state institutions, national political parties attempt to avoid resistance due to partisan identification. However, this ignores the potential for conflict associated with distinct local preferences organized under the institution of American federalism. This is especially problematic as polarization also increases the likelihood of more coercive policies due to the increased ideological distance. By decentralizing coercive policy to partisan allies, I argue that Congress reduces the likelihood of partisan-driven state resistance but enhances the potential for cross-pressured states to engage in cooperative behavior with partisan rivals. The following chapters will explore how this increased potential plays out in actual state response.

## CHAPTER 5

### PARTISANSHIP OR CONSTITUENT GOALS: EXPLAINING VARIATION IN STATE RESPONSE TO FEDERAL PREEMPTION

As a part of the American Recovery and Reinvestment Act of 2009, the Obama Administration opened up \$8 billion in federal grants to improve intra-city public transportation. These grants were allocated to state governments for the explicit purpose of by constructing high-speed light rail lines between metropolitan areas, and states were not permitted to redirect funds to address other transportation issues within the state. Thirteen states took advantage of these restricted funds and requested grants for high-speed rail projects between major population centers. However, as construction planning was in motion, a number of states that had received grants opted to return the federal funding. Ohio Governor John Kasich (R) and Wisconsin Governor Scott Walker (R) led the charge against the federal stimulus, campaigning against the projects. They argued that, in spite of the abundant job creation, the maintenance costs of the project would be a burden on state tax payers. Further they felt that the restrictions on spending placed by the Obama Administration limited their discretion in responding to their states existing transportation needs, including road and bridge improvements (Cooper 2010; Higgs 2011). These governors were joined by Florida Governor Rick Scott (R) in returning the funds. Scott told the press that he was concerned with the projects price tag both nationally and for Floridians, stating that “higher taxes and more government spending is a recipe for disaster” (R. Stewart 2011). Combined the three states returned almost \$3 billion in federal funding in an unprecedented rejection of infrastructure investment (James 2010; Schaper 2010; Tobin 2010).

The rejection of federal stimulus funds highlights the risk of partisan driven resistance to federal policy during heightened polarization. In this case, three Republican governors were willing to reject highly beneficial state funding for major infrastructure projects in order to

oppose a Democratic executive administration and reinforce a national Republican agenda that advocated for smaller government. As the *Resistance Hypothesis* argues, when both the institutions of American federalism and national political parties structure congruent electoral incentives that encourage resistance, then states are likely to resist federal policy. In this case, the combination of a strict or coercive federal policy and a strong incentive for partisan resistance due to polarization produced state resistance in spite of potential economic benefits. News agencies have been keen to highlight other conflicts between the Democratic Obama Administration and Republican state governors on issues ranging from gun control (Maler and Simpson 2016), immigration (Z. J. Miller 2014), and environmental protections (Restuccia 2015). The perception of heightened state resistance from the rival party has translated into a more polarized variety of federalism.

While, media outlets increasingly frame state resistance in partisan terms, major acts of resistance regularly occur across partisan lines. National legislation that received significant state opposition, including No Child Left Behind, Common Core, and the Real ID Act all exhibited opposition from a diversity of states and implementation by a diversity of states. This raises an important question: to what degree does partisan control of state institutions, relative to partisan control of the federal government, contribute to negative state response to federal policy? In other words, is the case of light-rail resistance truly the norm or is bi-partisan cooperation more frequent than would be expected given the polarized political climate?

This chapter responds to this question by exploring state response to federal preemption of state policy control. Preemption is defined as a major act of federal policy expansion into an area previously controlled by the states that aims to limit or restrict state discretion in policymaking. The coercive nature of preemptive policy creates the potential for conflict due to

variation in state constituent preferences structured by American federalism. As a result, state response to federal preemption should exhibit higher levels of resistance when states are responding to laws adopted by partisan rivals. I develop a new dataset that examines state legislative response to major preemptive federal legislation from 2005-2012 and categorize state laws as cooperating, negotiating or resisting federal law. I find that while federal coercion corresponds to reduced state resistance and negotiation, state partisan identification relative to the congressional majority that adopted the law has no statistical relationship with state response. Instead, legislation that negotiates and resists federal preemption focuses on local constituent interests and the preservation of state power and control in the face of federal expansion.

### **Bargaining, Negotiation, and Occasionally Resistance**

The use of federal preemption has increased since the 1960s with national politicians from both parties removing or coercing state power to accomplish policy goals (T. J. Conlan 1986, 1991; Robertson 2018; Zimmerman 1991, 2007, 2008). Shifting public preference for policy has altered the electoral motivations of national politicians, producing opportunities for the expansion of federal power. This has occurred within both parties, with federal expansion occurring independent of and occasionally at the expense of expressed partisan rhetoric regarding the distribution of power between state and federal agents (T. J. Conlan 1986, 1991; Robertson 2013, 2018; Zimmerman 1991). The nature of preempted policy has increasingly taken on a partisan tone, as national partisan agendas have consolidated around more distinct policy goals. The national Democratic Party has begun to emphasize policy floors, which establish baseline policy goals that allow more progressive states to advance more liberal local agendas (T. J. Conlan and Posner 2011; Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014). Conversely, the national Republican party has regularly opted for policy ceilings that set

strict limits or remove policy control from states entirely (SoRelle and Walker 2016). The end result is an expanded role for the federal government that comes at the expense of state control of policy. This results in a reduction in the ability of state politicians to establish local policy goals in response to constituent variation and instead further tethers state politicians to their identification with a national party.

While preemption has grown, the literature associated with ‘cooperative’ federalism has consistently highlighted the critical role states play in negotiating federal mandates, grants, and preemptions (Derthick 1970, 2004). For advocates of cooperative federalism, the ideal policy construction occurs when the federal government provides support and establishes loose policy goals, allowing states the maximum amount of latitude in implementation. Scholars examining cooperative federalism have highlighted the policy benefits of combining federal wealth and state flexibility in responding to local demands (Fischman 2005; Greer 2011; Greer and Jacobson 2010; Ingram 1977; Inman and Rubinfeld 1997; Rich 1989; Scicchitano and Hedge 1993; Woods 2008). As federal policies have become more coercive, the limitations associated with federal carrots and the lack of resources required to effectively employ the proverbial stick of federal preemption has preserved state power to challenge federal law (Scicchitano and Hedge 1993; R. B. Stewart 1977; Teske 2005; Thompson 1983).

More coercive policies are a response to state negotiation and resistance to federal expansion that is produced by partisan conflict, diminished state administrative or fiscal capacity, or policy goal disagreement, all of which can render the implementation of federal policy a political or financial burden on states (Derthick 1987, 2004; Zimmerman 2001). The significant variation in state implementation of federal policy produced by unique patterns of resistance and negotiation has been referred to as “Fractional Federalism” (Thompson and Gusmano 2014). The

majority of fraction and variation is produced when states attempt to negotiate or lobby for significant changes in federal policy. Negotiated state responses occur when states attempt to change portions of the law by petitioning Congress, their own states' Representatives and Senators or the associated implementing federal agency in an effort to obtain key policy concessions (Derthick 1987; Dinan 2011, 2014; Thompson and Gusmano 2014). This bargaining is not entirely distinct from cooperative federalism, which emphasized state variation in policy implementation. The key distinction is that while states retain power to alter policy under cooperative federalism, their power under negotiated state response is more limited and often requires federal cooperation and agreement.

When states actively work to obstruct policy implementation through a variety of methods, they engage in outright resistance to federal mandates and preemption. When engaging with federal mandates, states can stall policies by delaying decisions, potentially awaiting changes in federal control that would result in a more favorable political climate for negotiation (E. A. Miller and Blanding 2012). By rejecting federal funds or returning them at a later date, states not only block implementation internally but restrict the opportunities available to other states to engage in implementation (Gamkhar and Pickerill 2011, 2012; Nicholson-Crotty 2012). States can also work to undermine federal policy goals by directing funds away from federally mandated projects (Nicholson-Crotty 2004) and using federal regulatory powers in ways that run counter to stated policy goals (Bulman-Pozen and Gerken 2009). The most direct tools in the arsenal of American state resistance include blocking state participation through legislation and challenging the constitutionality of laws through legislation and litigation. Table 5.1 presents a review of the various types of state response to federal expansion, including characteristic tactics of resistance.

Table 5.1: Variations in State Response to Federal Mandate		
Response Type	Description	Tactics
Cooperation	The combination of federal funds with state flexibility to enhance policy implementation and delivery	<ul style="list-style-type: none"> <li>• Federal Funding (Woods 2008)</li> <li>• State expertise (Sapat 2004)</li> <li>• State admin capacity (Sapat 2004)</li> </ul>
Negotiation (Fractious)	States attempt to shift policy goals to be more in line with their priorities in order to reduce the political or financial burden on implementation.	<ul style="list-style-type: none"> <li>• Lobbying (Dinan 2011)</li> <li>• Bargaining (Dinan 2014)</li> <li>• Federal Waivers (Thompson and Gusmano 2014)</li> </ul>
Resistance (Fractious)	States attempt to undermine policy by choosing not to cooperate in the implementation process.	<ul style="list-style-type: none"> <li>• Delay Response (E. A. Miller and Blanding 2012)</li> <li>• Reject Funds (Gamkhar and Pickerill 2011; Nicholson-Crotty 2012)</li> <li>• Fund divergence (Nicholson-Crotty 2004)</li> <li>• Counter-regulation (Bulman-Pozen and Gerken 2009)</li> <li>• Legislation and Litigation</li> </ul>

### Resistance to Policies or Partisans

State response to federal preemption presents an excellent case study for examining the broader patterns of state response to conflicts in American federalism. Congress can work to expand constituent support by preempting authority over historically state controlled policy, in an effort to deliver core policy goals to their constituencies. In doing so, they directly engage in competition with state agents and expose legislation to constitutional challenges under the Tenth Amendment. Understanding when state agents are willing to challenge federal preemption is critical for examining the potential for bi-partisan state response in polarized conditions.

The *Federal Hypothesis* argues that, the federal government can encourage conflict with state agents through two distinct mechanisms: by restricting state policy discretion through

coercion and by polarizing around a particular policy and encouraging resistance due to partisan identification. Federal agents can also defer to the policy preferences of state politicians concerning the details of implementation and prevent resistance due to the variation associated with American federalism. As chapter three illustrated, the increase in polarization over the last thirty years has encouraged more coercive federal policy due to the distinction between partisan policy goals associated with the ideological division between the parties. The corresponding increase in federal preemption extends federal control over policy goals to varying degrees, ranging from low coercion policy floors that establish minimum standards, to highly coercive policy ceilings that remove control of a policy from state agents entirely (SoRelle and Walker 2016). The *Federal Hypothesis* suggests that states will be more likely to challenge federal mandates that employ more restrictive policy ceilings as opposed to policy floors due to the reduction in state discretion over policy implementation.

The high degree of coercion associated with preemptive federal policy establishes the potential for conflict due to variation in constituent preferences structured by the institution of American federalism. However, the impact of national political parties, which bridge state and federal politicians under a common label, is less clear. The increase in partisan resistance at the federal level associated with national polarization has expanded the potential for conflict associated with the institution of national political parties. Media narratives and public perception of polarization suggest that national polarization has extended well into state politics, with state politicians being more likely to resist federal law when that law was adopted by the rival party. This is unsurprising as state partisans are accountable to their local constituents as a representative of their political party and should be encouraged to pursue common partisan goals, especially during high levels of polarization. As chapter four highlighted, increases in



polarization have corresponded to an increase in congressional decentralization of policy when partisan allies control more state institutions, in an effort to counteract this potential for conflict. If this increase in partisan-driven state resistance holds true, then the *Resistance Hypothesis* argues that states ought to be more likely to respond to federal preemption from rival partisans with outright rejection. Given that policy is already coercive, the expectation is that state politicians that do not share a partisan label with congressional majorities will encourage resistance to federal preemption.

While the *Federal Hypothesis* and *Resistance Hypothesis* establish the potential for state resistance to national partisan rivals due to the combination of increasing coercion and national polarization, the *Negotiation Hypothesis* posits a potential alternative outcome. The effectiveness of the *Resistance Hypothesis* for explaining conflict between the state and federal governments rests on the assumption that partisan allies at the state and federal level share a common ideology and policy goals. However, the adoption of more extreme policy stances by polarized national political parties can translate into increased ideological distance between polarized congressional parties and moderate states. This variation, combined with the increase in coercion means that state politicians are particularly accountable to the unique constituent preferences produced by the geographic distinctions associated with American federalism. If local interests diverge significantly from national policy, independent of partisan identification, then state politicians could confront the cross-pressured incentives required for bi-partisan engagement. If this occurs, then patterns in federal-state conflict should be unrelated to presence of a common partisan label between state and federal politicians in power. In other words, if there is no relationship between partisanship and negative state response, then conflict between state and federal agents may be

occurring both between partisan rivals under the *Resistance Hypothesis* and between partisan allies under the *Negotiation Hypothesis*, in spite of national polarization.

## **Methods**

To collect and analyze state response to federal preemption, I began with the list of federal legislation invoking preemption produced by SoRelle and Walker (SoRelle and Walker 2016). SoRelle and Walker identify 283 express federal preemption statutes, or “instances in which Congress has demarked the breadth of a federal statute’s preemptive reach through an explicit statutory provision,” from 1990 until 2012 (Joondeph 2011; SoRelle and Walker 2016). I examine state laws from 2005 until 2012 for response to these federal preemption laws. This time period provides a diversity of national partisan arrangements including unified Republican control (2005-2006), divided control with a Republican president (2007-2008), unified Democratic control (2009-2010), and divided control with a Democratic president (2010-2012). Further, this period has experienced some of the highest levels of polarization during modern times, making it a strong test case for the effect of electoral incentives associated with polarization.

For each federal statute, I catalogue all state laws that directly mention the federal statute in the text of the law. Data was collected searching LexisNexis State Capital for all explicit mentions of federal preemption laws that occurred within four years of the original federal legislation. For the 129 federal preemption laws passed between 2005 and 2012, I identify 2091 state bills that directly mention the federal law within four years of its passage, including 122

resolutions.<sup>1</sup> Of those, 914 bills received a vote in the legislature and 679 became law. I searched the content of each bill that received a vote for direct mentions of the federal law and coded each bill according to the explicit statements concerning the degree of expressed resistance to federal preemption of state authority. Each bill was coded as cooperating, negotiating or resisting federal preemption. The majority of legislation states enacted in response to changes in federal law were coded as cooperation with federal preemption. These bills included legislation that updated state laws or tax codes, redefined terms based on new federal policy, or implemented federal programs at the state level. Laws coded as cooperation usually expressly mentioned the goal of complying or cooperating with federal legislation or updating state law to conform with federal law. Legislation that attempt to alter portions of the federal law, without challenging its legitimacy or rejecting it entirely were coded as negotiated responses. These laws consisted of express efforts to alter the law at the state level and explicit requests for Congress to change portions of the law nationally. Finally state legislation that expressly blocked state implementation of federal policy, challenged the constitutionality of a law, or called for a full repeal by Congress were coded as resistance.

I use these coded bills to calculate a state response score and a chamber response score for each piece of federal legislation. States and chambers are classified as adopting a negotiated or resistant response based on the presence of at least one adopted piece of legislation that fell into that category, respectively. The resulting measure scores the state and chamber response for each state to a given federal law where 1 indicates the presence of legislation that challenges the

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<sup>1</sup> I exclude the 2010 Patient Protection and Affordable Care Act, as it constitutes an outlier with an extensive state response. This will be explored more during the discussion and in the next chapter.

law within the categories of negotiation, resistance or either. Politicians that adopt legislation challenging a federal law but none-the-less cooperate with the law in other ways are still classified as negatively responding to federal law. I assume the passage of any negative legislation signals to federal politicians the state's intention to obstruct, challenge or negotiate federal preemption, in spite of current participation.

These binary state and chamber response scores are employed as the dependent variable in two distinct analyses. The first analysis looks at state response broadly by examining legislation passed by the state and adopted into law, including resolutions that required the vote of only one chamber. Three models are tested where the dependent variable is coded as 1 for all states/chambers that responded with any negotiated (Model 1), resistant (Model 2), or negative (negotiated or resistant) (Model 3) reaction to federal legislation, respectively, while all other states are coded as 0. The second analysis looks specifically at chamber passage, examining the frequency that upper and lower chambers pass legislation challenging federal law adopted by partisan allies in Congress. This second analysis more clearly establishes the link partisanship plays in state response by controlling for the complications associated with divided government at the state level. Again, three models are tested where the dependent variable is coded as 1 for all chambers that responded with any negotiated (Model 1), resistant (Model 2), or negative (negotiated or resistant) (Model 3) reaction to federal legislation, respectively, while all other states are coded as 0.

The main explanatory variables within the model aim to measure the degree of coercion and the potential for partisan oriented state resistance when Congress and the states are controlled by rival partisans. The degree of coercion of the federal policy is derived from SoRelle and Walker's original coding and is measured as a categorical variable with three

potential categories of coercion for each federal law. Federal laws that employ policy floors to set minimum policy goals or federal criteria for state implementation, act as the baseline. Policy floors represent the least coercive variety of federal preemption and should correspond to lower levels of state resistance. Federal laws that completely remove policy control from state agents are categorized as policy ceilings and represent the most restrictive variety of preemption. These laws should produce the most state resistance due to their highly coercive nature. Finally, if a law contains both policy floors and policy ceilings, it is coded as a mixed level of coercion. State response to these laws will likely vary to the extent of coercion, which remains unmeasured by this limited score.

Allied partisan control of state and federal institutions is coded using a binary variable when all relevant institutions for the level of analysis are under the control of the same political party. For the state-level analysis, where the dependent variable is the presence of adopted state law, allied partisan control is coded as 1 when all three state institutions are controlled by politicians that share a common partisan label with congressional majorities in both chambers and 0 otherwise. This assumes unified partisan control of both Congress and state institutions and constitutes a hard line-test for state resistance. Allied partisan control of all of these major institutions should correspond to a decline in state resistance. Allied partisan control between the state legislature and the President is measured separately and coded as 1 if the politicians in control of all state institutions share the same partisan label as the President and 0 otherwise.

For the chamber level analysis, where the dependent variable is the passage of a law within a single chamber, allied partisan control is coded as 1 when the chamber majority is controlled by politicians that share a common partisan label with congressional majorities in both chambers and 0 otherwise. This assumes unified partisan control of Congress. We would expect

that the presence of partisan allies at the federal level would reduce the likelihood of resistance responses from state politicians. Allied partisan control of the state legislative chamber and the president is coded as 1 when the same party controls both institutions and 0 otherwise. I also control for divided government at the state level to assess the degree of sophisticated voting and signaling used by state chambers.

In both models, control variables are used to account for other state and federal concerns that could impact state response. I control for the degree of congressional polarization at the time of passage of the federal law using the first dimension DW-NOMINATE party difference, averaged between both chambers. In order to account for state administrative capacity in responding to legislation, I include the annual state operating budget expenditure per capita from the United States Census, State Government Finances Survey. Higher levels of state funding are an indication of more professionalized state administrations, which are more likely to have clearer stakes regarding the revision of state law and more incentives to push the legislature to challenge revisions that run counter to state-level goals. Finally, I include SoRelle and Walker's policy typology to control for stronger resistance within particular policy arenas.

## **Results**

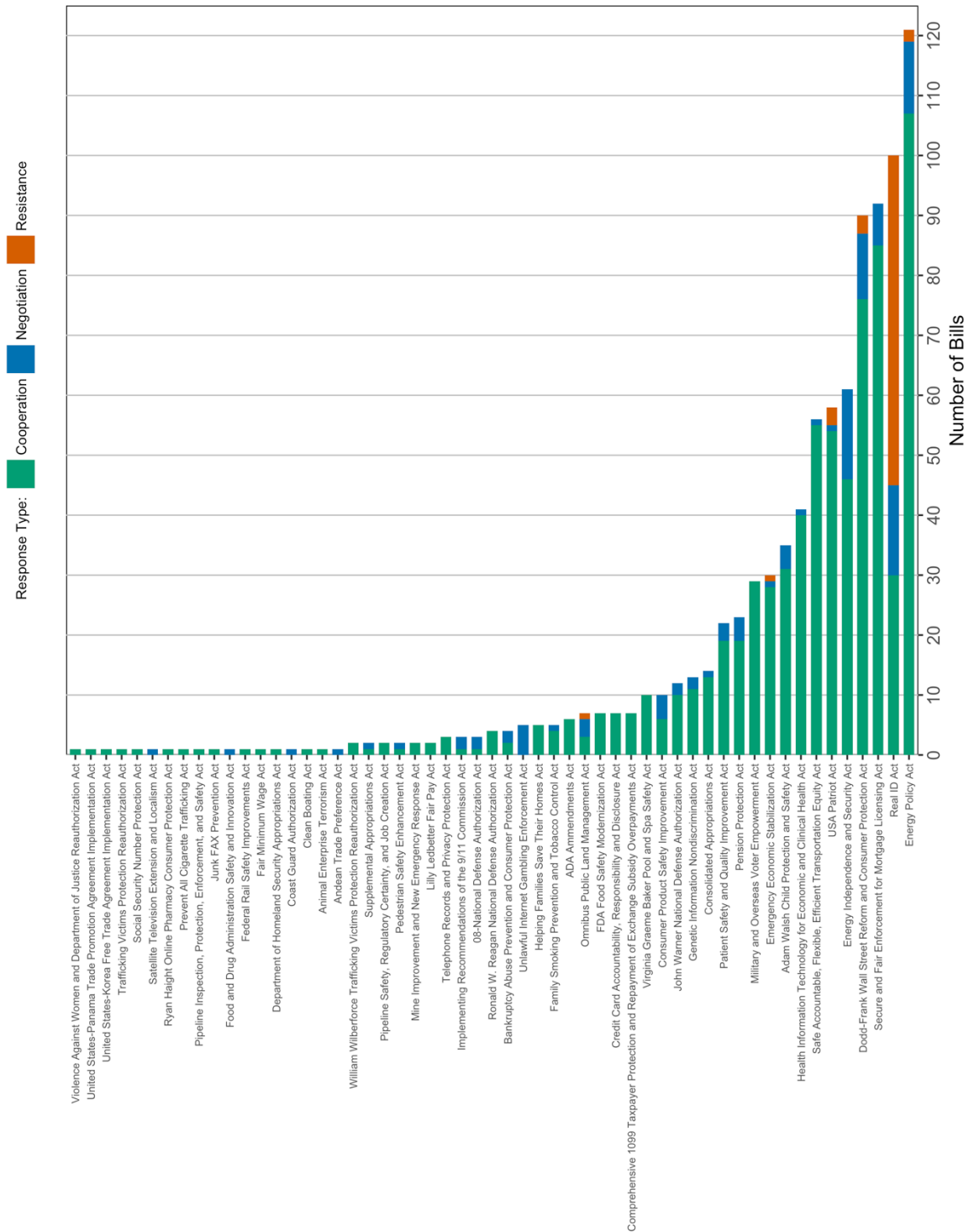
### ***Variation in Response Rates***

The most striking element within the data is the generally low levels of state response, particularly negative response, to federal preemption. Only fifty-five of the one-hundred and twenty-nine federal preemption statutes passed between 2005 and 2012 received any explicit response from state legislatures. Further, the bulk of these responses were positive, with states expressly cooperating with changes in federal law. Of the 914 bills that received a floor vote in state legislatures (either passed or failed), roughly 82% were efforts to cooperate with changes in

federal policy. Legislative resolutions accounted for about half of the remaining legislation that challenged federal preemption, including fifty-five resolutions that negotiated preemption and thirty-three resolutions that expressly resisted preemption. 11% of the 914 bills, or one-hundred bills attempted to negotiate the terms of federal policy by targeting specific components of the law, requesting new exemptions, or advocating for more funding. Finally, a mere 7% of state legislation that received a vote and directly addressed the expansion of federal power through preemption actually resisted that expansion in a direct way.

While negative state responses were rare, they were not evenly distributed between federal laws. Figure 5.1 illustrates the proportion of bills, categorized as compliance, negotiation, and resistance by federal law.

Figure 5.1: State Legislation Responding to Federal Preemption, By Response Type and Law

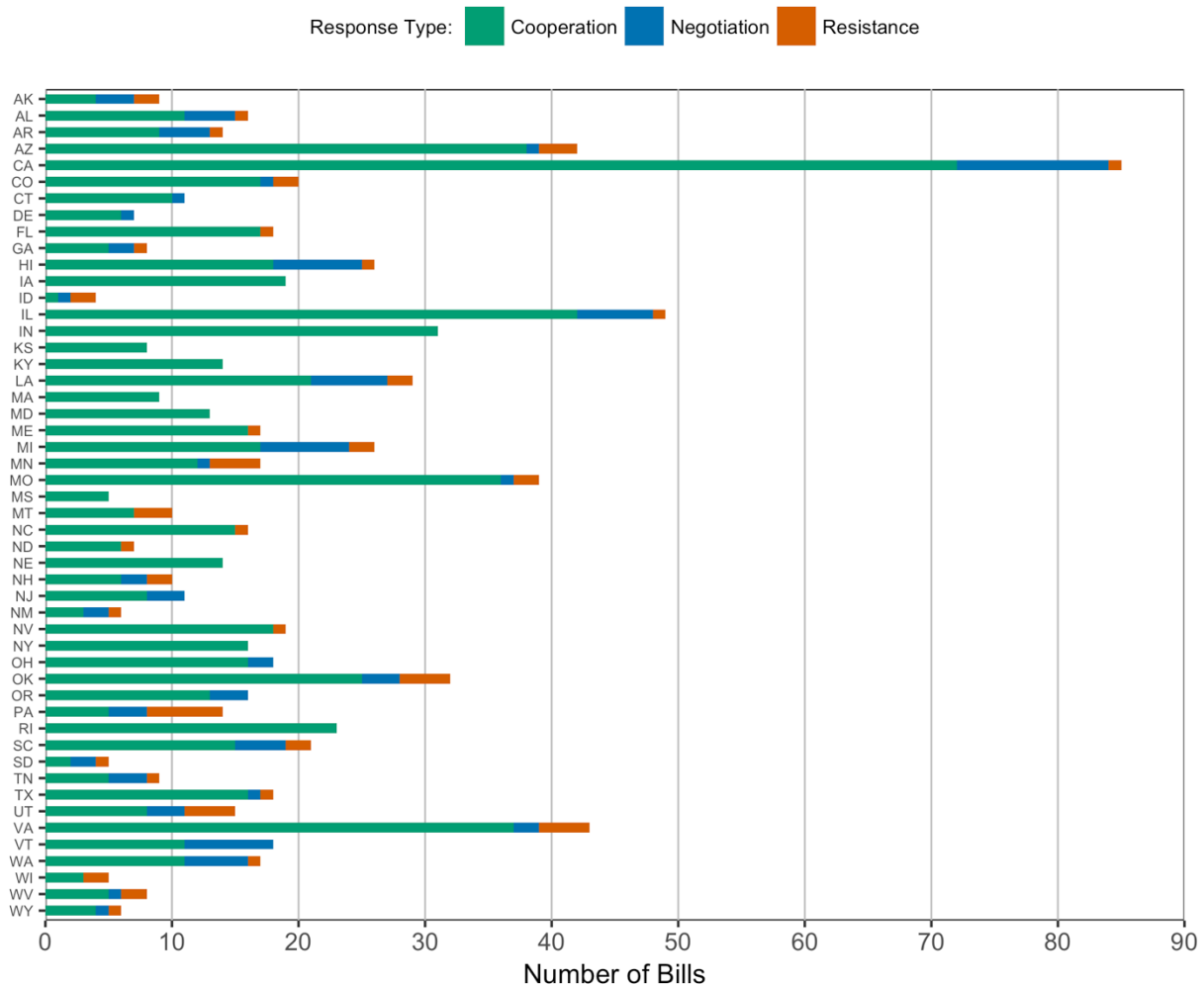




As the Figure 5.1 illustrates, the vast majority of state response to federal preemption aims to cooperate with the national government. While state response to federal preemption does not occur exclusively through legislation, it is telling that the elected officials in state legislatures chose to avoid conflict at such significant levels. Further, certain federal laws received significantly more attention by state legislatures than others. Within the data, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Secure and Fair Mortgage Licensing Act of 2008, and the Energy Policy Act of 2005 received extensive state attention, though mostly through legislation that cooperated with the federal law. Further, the REAL ID Act of 2005 received the most negative attention, with a significantly higher rate of resistance than all of the remaining legislation. The remaining acts of resistance and negotiation are scattered fairly evenly amongst the other federal laws.

States also have a high degree of variation regarding the extent to which they respond to federal law, both positively and negatively. Figure 5.2 plots response rate by type amongst all fifty states.

Figure 5.2: State Legislation Responding to Federal Preemption, By Response Type and State



As the Figure 5.2 illustrates, California and Illinois stand out as high output states with regards to legislation that cooperates with the federal government. This is most likely a product of the high professionalization of these legislatures and the significant resources at their disposal which allows the legislature to make substantive changes in policy (See: Squire 2007). States with lower legislative professionalism might instead rely on state executive agencies to adopt rules to comply with federal law. This may account for the low rates of state response across all federal policies. However, acts of resistance and negotiation are fairly evenly distributed between the

states. Thirty-one states enacted laws that attempted to negotiate federal preemption, while thirty-four states enacted laws that resisted federal preemption during this period of study.

### ***State Response to Federal Preemption***

I use logistic regression to empirically assess the relationship between state response to federal preemption and the degree of federal coercion and presence of partisan allies at the state and federal level. The first series of models aims to assess the role partisanship plays in shaping negative state-level response to federal mandate. States are coded as having a negotiated, resistant or negative state response when they adopt into law at least one piece of legislation that falls into these categories. Negative state responses include all states that either negotiated the law or resisted the law. All three models use a generalized linear model for logistic regression and results are listed in Table 5.2.

**Table 5.2: Modeling State Response to Federal Preemption Law**

	Model #1: Negotiated Response	Model #2: Resistance Response	Model #3: Negative Response
(Intercept)	2.473 (926.5)	76.5 (1535)	15.02 (927.7)
Policy with Floor and Ceiling (Binary)	1.536 (0.3241)*	3.428 (0.9687)*	1.764 (0.3073)*
Policy with Ceiling (Binary)	-0.05 (0.33)	-1.5 (0.5933)*	-0.2948 (0.2929)
State Institutions Share Pres. Party (Binary)	0.2531 (0.3273)	0.1038 (0.6266)	0.2536 (0.2853)
State Institutions Share Congress Party (Binary)	-0.3831 (0.3391)	-0.2458 (0.6264)	-0.3478 (0.2919)
Congressional Polarization	-22.76 (6.537)*	-102.8 (22.77)*	-36.17 (7.211)*
State Operating Budget	1.3E-8 (E-9)*	3.1E-9 (1.04E-8)	1.2E-8 (4.9E-9)*
Policy Type: (Binary)			
Commerce, Energy, Labor, Transportation	14.2 (926.5)	8.227 (1535)	13.76 (927.7)
Health, Safety, Environmental Protection	13.59 (926.5)	9.719 (1535)	13.38 (927.7)
Natural Resources, Conservation	14.08 (926.5)	12.2 (1535)	13.81 (927.7)
Civil Rights	14.25 (926.5)	13.28 (1535)	15.08 (927.7)
Taxation	0.5835 (1126)	2.509 (1794)	1.015 (1116)
Banking and Finance	14.93 (926.5)	12.16 (1535)	14.85 (927.7)
N	2696	2696	2696
McFadden's Pseudo R <sup>2</sup>	0.09	0.36	0.13
Note: Table entries are GLM regression coefficients for a logistic regression, estimated standard errors in parentheses, *p<.05 two-tailed			

All three models provide evidence that the degree of coercion matters, though not always in expected ways. The positive coefficients associated with the presence of both a policy floor

and a policy ceiling indicate that states are more likely to negotiate federal preemption or resist it entirely when both types of coercive elements are combined into a single bill, as opposed to only a policy floor. In other words, as the degree of coercion within a federal law increases, we see a corresponding increase in negotiation and resistance. However, this effect is limited. The negative coefficients for policies with only policy ceiling indicate that states are less likely to negotiate and resist federal legislation when policies remove state control or jurisdiction entirely. This provides some evidence that the most highly coercive policies, involving removal of state control entirely, are not regularly challenged by state agents. However, this finding is only statistically significant for state efforts aimed at resistance.

The lack of statistical significance for the measures of allied partisan control of state and federal institutions reveals a surprising lack of partisan oriented negotiation and resistance from state agents. The expectation is that the presence of shared partisan label between state institutions and the President or Congress would reduce the likelihood of resistance. However, state politicians appear unconcerned with the partisan origins of federal law, with state negotiation and resistance occurring independent of partisan identification. There is no statistically significant impact on patterns in state negotiation and resistance when allied partisans control both state and federal institutions. While it is difficult to rule out Type II error, the large sample size would indicate a high level of power within the analysis. This lack of partisan-driven state resistance indicates that national partisan polarization has not trickled into state patterns in resistance to the degree we might expect. Instead, the electoral pressures from distinct state interests organized under the institution of American federalism may produce pressure to cooperate or resist federal law, independent of the presence of a common partisan label.

Beyond the degree of coercion, higher levels of congressional polarization are associated with lower levels of negative state response within all three models. This may be because obtaining the necessary votes from partisan rivals and moderates, particularly in the Senate, may result in more significant policy latitude afforded to the states and a decrease in preemptive ceilings that lack bi-partisan policy support. However, the narrow scope of the timeframe and the low variance in polarization make interpreting this result difficult. Finally, state operating budgets correspond to an increase in the likelihood of negative state response, particularly for negotiated responses. Operating budgets are an indication of both legislative and bureaucratic resources, both of which will result in more informed responses that more carefully invoke the interests of the states.

#### ***State Legislative Chamber Response to Federal Preemption***

While the first analysis established that state partisans are not more inclined to cooperate with their national co-partisans when they adopt preemptive policies, the dynamics of divided government within the state can muddle this finding. If state legislative chambers know that rival partisans in control of the Governor's office or the other chamber are going to veto or block legislation, then they may adopt policies they don't necessarily want as a signaling device for core supporters. The second analysis addresses this concern by examine negative response at the level of state legislative chamber. The upper and lower chamber of each state is coded as having a negotiated, resistant or negative state response when they pass at least one piece of legislation that falls into these categories. All three models use a generalized linear model for logistic regression and results are listed in Table 5.3.

Table 5.3: Modeling Chamber Response to Federal Preemption Law

	Model #1: Negotiated Response	Model #2: Resistance Response	Model #3: Negative Response
(Intercept)	11.13 (654.4)	77.04 (1083)	26.76 (654.8)
Policy with Floor and Ceiling (Binary)	1.67 (0.2369)*	3.435 (0.6853)*	1.968 (0.2283)*
Policy with Ceiling (Binary)	-0.4002 (0.2522)	-1.504 (0.4199)*	-0.6412 (0.2224)*
Shared Party with Pres. (Binary)	-0.001464 (0.1816)	-0.07503 (0.3173)	-0.06323 (0.157)
Shared Party with Congress (Binary)	-0.04148 (0.1829)	-0.2702 (0.3183)	-0.1484 (0.158)
State Divided Government (Binary)	0.01452 (0.1822)	0.182 (0.2627)	0.07298 (0.1555)
Congressional Polarization	-32.1 (6.022)*	-103.3 (16.14)*	-48.72 (6.187)*
State Operating Budget	1.54E-8 (3.9E-9)*	2.6E-9 (7.6E-9)	1.3E-8 (3.5E-9)*
Policy Type: (Binary)			
Commerce, Energy, Labor, Transportation	13.95 (654.4)	8.203 (1083)	13.32 (654.8)
Health, Safety, Environmental Protection	13.01 (654.4)	9.7 (1083)	12.68 (654.8)
Natural Resources, Conservation	14.09 (654.4)	12.19 (1083)	13.63 (654.8)
Civil Rights	13.98 (654.4)	13.26 (1083)	14.66 (654.8)
Taxation	1.081 (789.9)	2.503 (1267)	1.464 (781.8)
Banking and Finance	14.87 (654.4)	12.15 (1083)	14.67 (654.8)
N	5392	5392	5392
McFadden's Pseudo R <sup>2</sup>	0.13	0.36	0.17
Note: Table entries are GLM regression coefficients for a logistic regression, estimated standard errors in parentheses, *p<.05 two-tailed			

The results from the chamber-level analysis largely reiterate the results when examining state-level response. Chambers are more likely to resist federal preemption when the federal law incorporated a policy floor and a ceiling, but they are less likely to resist federal preemption that employs a policy ceiling alone. Again, increasing levels of federal coercion can correspond to increasing negative state responses but only to a point. When the federal government takes full control of a policy there is a corresponding decline in resistance. Again, partisanship within a specific chamber is independent of chamber action with regard to resistance. In other words, legislative chambers are not more likely to challenge federal preemption when the law was adopted by the rival political party at the national level. In addition, divided government at the state level shows no statistically significant correlation with negative state response to federal law within a specific chamber. In other words, chambers are probably not employing sophisticated voting patterns and adopting partisan-driven responses that they know will be vetoed in the other chamber or by the Governor. Finally, increased polarization again

corresponds to a decline in negative state response across all three models, while an increase in state operating budget corresponds to an increase in negotiation and negative responses more broadly. These results reiterate that, even when partisan legislative chambers act independently from other state institutions, their decisions regarding resistance to federal preemption still largely ignores their partisan identification and instead relies on unmeasured local constituent preferences regarding the policy in question.

### **Federal Mandate and State Nuance**

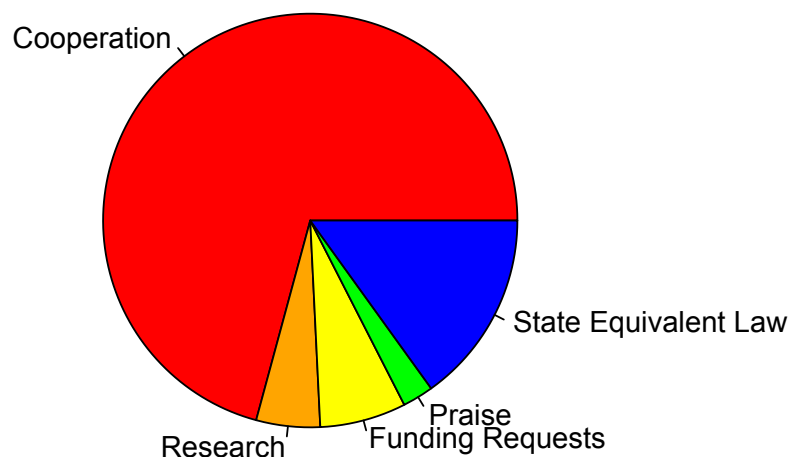
The results of the logistic regression shed light on the conditions that dictate state response to federal preemption. For all three models, moderately coercive policies that incorporate policy floors, which limit state discretion without removing it entirely, are more likely to result in state level contestation and lobbying for change. However, highly coercive policy ceilings that remove state discretion entirely correspond to a reduction in the potential for a negative state response. Further, increases in congressional polarization correspond to a reduction in state resistance, though this is probably a side effect of the short time-period being sampled. A more extended sample that incorporated a larger variation in polarization would provide more informative results on this relationship. Finally, while the structure of the federal law and degree of coercion within the original law seems to condition state response, state partisanship relative to the national party in power has little impact on state resistance. Decisions to negotiate and resist federal preemption seem to occur independent of attachment to national partisan agendas. In other words, it appears that unmeasured state level factors contribute more significantly to resistance than the presence of a common partisan label. While state policy preferences towards each individual federal law is difficult to measure, the variation in

justifications for state response found within state legislation can help to explain the significant variation in state response, independent of partisan identification.

### ***Cooperation as Research, Funding, and Concealment***

The vast majority of the legislation that received a vote, 743 bills, represented an express state attempt to cooperate with or take advantage of federal legislation that preempted or otherwise impacted state control of policy. While all of these bills endorsed federal action and intrusion within a historically state controlled policy, they did so through different mechanisms. This variation can be separated into four categories and is illustrated in Figure 5.3.

**Figure 5.3: Cooperation Responses by Category**



The bulk of legislation, roughly 526 bills, represented an attempt to update state law merely to cooperate with federal law through compliance with new requirements. This included altering state regulation to match federal legislation, redefining critical terms to align with federal law, or altering the tax code to incorporate new sources of federal exemptions and funding. In addition to efforts to cooperate with federal law, some states went further in signaling their support for



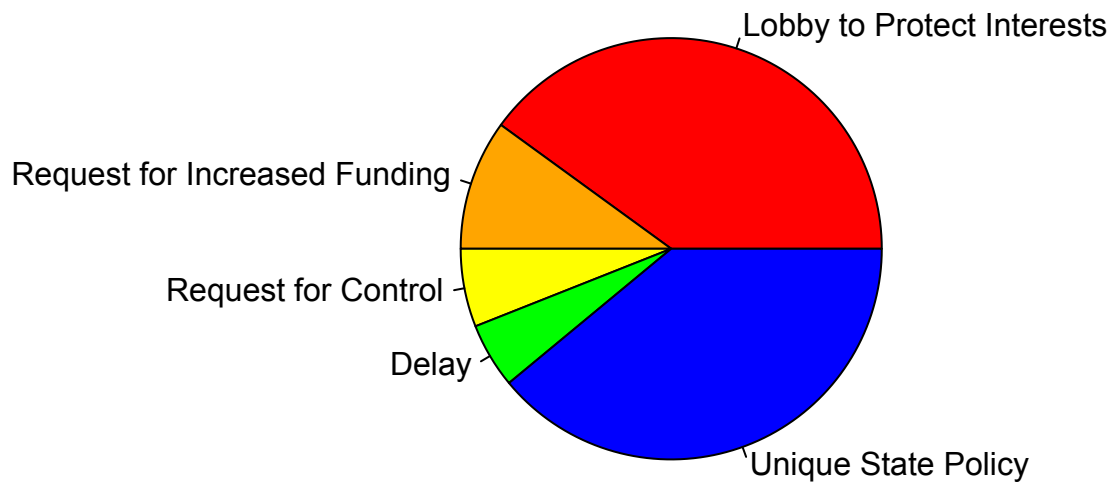
federal preemption by adopting resolutions that praise federal law. In total, eighteen of these bills received a positive vote in at least one chamber of the state legislature.

While cooperation remains the operative response of states to federal preemption during this period, other varieties of cooperation vary in their degree of enthusiasm and support for federal law. States regularly fell short of adopting legislation but instead directed state resources to researching the costs and requirements of cooperation through special legislative or executive committees. Thirty-seven state bills were targeted at developing research to most efficiently comply with federal policy changes. In addition, fifty state bills were explicitly directed at obtaining federal funding, either through direct grant requests, encouraging the executive branch or local governments to apply for grants, or ultimately adopting legislation with the express aim of receiving federal funds. Finally, roughly one hundred and twelve state bills established cooperation with federal preemption without ever directly mentioning the federal law in question. These laws would often rename the federal law or append the state's name to the original federal title in an effort to claim ownership over the legislation. This level of subterfuge may be indicative of efforts to cooperate with mandates that were adopted by the rival party in a manner that conceals state involvement. This pattern warrants additional investigation in future studies.

### ***Negotiation as Request and Revision***

Negotiated responses also possess significant variation and nuance in how states responded to federal preemption, as illustrated by Figure 5.4.

**Figure 5.4: Negotiated Responses by Category**



Of the one-hundred state laws that negotiate federal requirements to policy, slightly more than half were attempts to obtain concessions from Congress on key points within the law. The majority of these requests were explicit attempts to protect notable state interests by altering some portion of the federal law. These lobbying attempts tended to focus on niche constituent groups in the states that could benefit from minor changes. Michigan, Missouri, Oklahoma, and Pennsylvania all petitioned Congress to exempt all-terrain vehicles and dirt bikes from restrictions on the quantity of lead in products under the Consumer Product Safety Improvement Act of 2008. In addition to requests for changes in regulatory requirements, states will also petition for increases to funding for specific programs that directly benefit their constituents. For example, Michigan adopted resolutions that requested Congress fully fund the Low-Income Housing Energy Assistance program under the Energy Policy Act of 2005, while New Jersey requested that Congress expand funding for the Health Information Technology for Economic and Clinical Health Act of 2009. Occasionally, the combination of funding and protecting interests will converge into a single goal for specific state purposes. For example, Alaska

requested changes to legislation and additional funding under the Coast Guard Authorization Act of 2010 to purchase and operate icebreaker boats in their harbors.

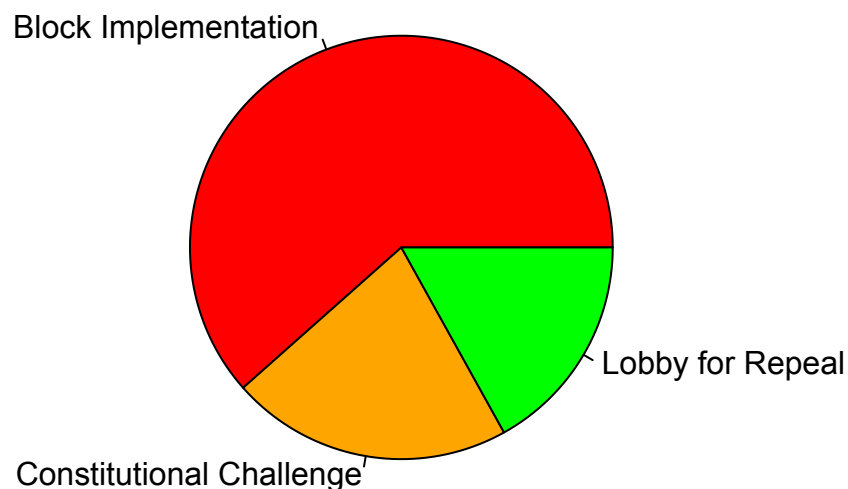
While legislation to change regulatory requirements or increase funding represents a direct appeal to Congress for specific goals, other legislation aims at reclaiming some state control of policy. Six state laws lobbied Congress for more extensive control of implementation of federal policy within their state. These bills originated in a variety of states including Vermont, Washington, California, Delaware and Utah and were regularly targeted at congressional majorities controlled by the rival party. These laws targeted control of public lands (Utah), control of the state Guard (Washington, Delaware), and control of vehicle emissions and ethanol standards (California and Vermont). The complex implementation requirements of the REAL ID Act of 2005 prompted five states to request extensions to comply of the law. Finally, thirty-nine states adopted legislation that actively altered federal policy by carving out new exemptions to regulation, requiring additional state regulation and approval, or attempting to fill in gaps created by federal policy. While these efforts aimed to alter federal regulation in order to tailor it to state preferences, they did so in a way that continued to encourage state adoption of federal policy by endeavoring to enhance and not restrict regulation and policy delivery. Again, the bulk of these alterations were designed to protect local interests and regulate for specifically local concerns.

### ***Justifications for Rejection***

Outright resistance to federal preemption and mandate represents the smallest category of state response to federal mandate, constituting only 7% of all state response, or sixty-five bills. Of these, eleven bills were resolutions that lobbied Congress to repeal the entire law. Fourteen of these bills advocated a Constitutional challenge to the law, even going as far as encouraging the

state Attorney General to file lawsuits challenging the law in the federal courts. Finally, forty bills expressly blocked state implementation of federally preemption within the state. These ratios are illustrated in Figure 5.5.

**Figure 5.5: Resistance Responses by Category**



State acts of resistance to federal preemption almost exclusively targeted major federal legislation that constituted salient issues for both the national parties and within the news media. All sixty-five bills were in response to six pieces of federal legislation: The Energy Policy Act of 2005, the USA Patriot Act Improvement and Reauthorization Act of 2005, the Emergency Economic Stabilization Act of 2008, the Omnibus Public Land Management Act of 2009, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. However, of the forty bills that expressly blocked state implementation, thirty-six of them were passed in response to the 2005 REAL ID Act.

The REAL ID Act adopted extensive requirements for state issued drivers licenses for the purposes of national travel and attempted to facilitate a national registry of license recipients, including extensive personalized data. Two justifications for resistance to the REAL ID Act

surfaced during the early period of resistance and they are particularly indicative of the mentality of state politicians in responding to federal mandate. State legislation regarding the REAL ID act regularly expressly rejected the law due to the high costs associated with cooperation. State legislatures regard the REAL ID Act as an unfunded mandate, and consequentially, challenged the constitutionality of the law under the Tenth Amendment. Secondly, states saw the extensive collection of the personal information of their citizens as a violation of civil rights and privacy laws. In this regard, they claimed to challenge the law in an attempt to protect the interests of their citizens in the face of a federal government that was overextending its authority into their personal lives. By claiming that the law infringed upon both the rights of the states as states and the rights of the constituents whom they represent, state politicians attempted to maximize their leverage in challenging an extensive piece of federal legislation.

## **Conclusion**

The polarization of the national political parties has expanded the potential for conflict between state and federal governments due to partisan distinctions, resulting in notable partisan-driven patterns of resistance. The question that this dissertation has aimed to address is, when might we expect bi-partisan cooperation between federal and state agents in spite of this increased incentive to partisan resistance due to polarization. I have thus far argued that two institutions structure the potential for conflict between state and federal agents: national political parties which can encourage partisan-driven state resistance and American federalism which organizes distinct state preferences and creates a representational advocate for those preferences in the state government. When these institutions structure electoral incentives in ways that cross-pressure state politicians to both cooperate and resist national policy, we can find the potential for negotiation and bi-partisan implementation.

Chapter three and chapter four established the potential for state conflict with federal agents due to both the distinct state preferences organized under American federalism and the polarization of national political parties, which has encouraged resistance to laws adopted by the rival party. Chapter three highlighted the growth of federal coercion due to the ideological polarization of the national political parties, citing the potential for increased conflict due to state variation. Chapter four emphasized the efforts of the federal government to reduce partisan-oriented resistance by decentralizing policy at higher rates when partisan allies control more state institutions. While partisan polarization produces an expectation of partisan-oriented resistance, the combination of coercive policy and partisan-oriented decentralization raises the potential for bi-partisan patterns in state response. This chapter builds on these findings by exploring how these patterns in coercion and partisan-oriented decentralization play out in state response by examining the relationship between partisan control of state and federal institutions and state challenges to federal preemption.

The data and results illustrate that the bulk of state response to federal preemption represents an attempt to cooperate with federal law, and this cooperation occurs across partisan lines. When more negative responses do occur, they generally operate independent of identification with a national party. In other words, the presence of partisan allies at the federal level has no statistically significant impact on the presence of a negative state response to federal policy. Instead, all three models indicate that the degree of coercion within the policy and the resources within the state have a clearer relationship with state response. This provides evidence that in responding to federal expansion states typically are not sending partisan signals but instead protecting specific local interests. The examination of the content of legislation that attempts to negotiate and resist federal mandate revealed the nuance of these state interests.

While this study assesses the impact of partisanship on variation in state response to federal policy, it retains some significant limitations. First, the narrow scope of the legislation restricts the study to two fairly recent presidencies. While the impact of polarization and partisan division should be most pronounced during this recent period, a more expansive study would aid in assessing the full scope of state response. Secondly, this study focuses exclusively on the decisions of state legislatures in responding to federal actions. While legislatures constitute an excellent case due to their relationship with critical state constituencies, they are not the only actors involved in negotiating federal policy. Governors and executive agencies can act independently to respond to federal preemption. Further local and municipal governments represent an additional layer of governance that can respond to federal law and even conflict with politicians in the state capital. In addition, this study again only focuses on the origins of conflict and does not address the role of the courts in resolving conflict. Explaining the full variation in patterns of state resistance ought to incorporate state-level patterns in litigation and understanding the role of the potential for success in challenging federal law. Finally, while the REAL ID Act constituted a major site of state resistance, this study consciously excludes the most politically salient piece of legislation from the period, the Patient Protection and Affordable Care Act (ACA). Unlike the bulk of the legislation within this data, the ACA remained a consistent campaign issue around which national figures continued to polarize and reiterate opposition. What happens when the polarization of legislation does not stop with policy adoption but remains a salient campaign issue in subsequent years? The final chapter will examine this question directly.

## CHAPTER 6

### BETWEEN NATIONAL PARTISAN GOALS AND STATE IDEOLOGY: THE BALANCING ROLE OF STATE INTER-PARTY COMPETITION ON MEDICAID EXPANSION

The highly polarized Patient Protection and Affordable Care Act (ACA) was signed into law in March 2010, having passed without a single Republican vote (Staff-NPR 2010). Democrats heralded the law as a victory for health policy, while Republicans decried it as a federal takeover of state prerogatives (Francis and Francis 2010). The Supreme Court threatened these claims by granting states the authority to reject the federal mandate to extend Medicaid eligibility to 138% of the poverty level (*Nat. Fedn. of Indep. Business v. Sebelius* 2012).<sup>2</sup> This ruling increased between-state inequalities in health coverage: uninsured rates for low-income non-elderly populations were reduced by 6.7% in Medicaid expanding states (Key Facts about the Uninsured Population 2016) while, in non-expanding states, the ACA increased inequality by not only denying lower income citizens access to Medicaid but also preventing them from receiving federal subsidies (Garfield et al. 2014). To this day, seventeen states continue to take advantage of this ruling, opting to refuse federal funding.

The constitutional outlines of federal and state authority, specifically the Tenth Amendment, place significant burdens on the federal government's ability to influence state-controlled policy and extend the potential for states to reject federal policy, and Medicaid expansion was no exception. Federal grants and contestable mandates that attempt to overcome these burdens result in complex joint policy implementation, where cooperation between federal

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<sup>2</sup> Throughout the paper I will refer to Medicaid expansion as a mandate while also acknowledging that the Supreme Court's ruling made it an option. I do so to preserve the original intention of the law and because my data and analysis extend before and after the Court's ruling. Further, the fact that it moved from mandate to option is a direct product of state response.



and state authorities is required. States possess myriad options to respond to federal-state joint implementation efforts, resulting in “fragmented” policy implementation with high variation between states (Bowling and Pickerill 2013; Dinan 2008; Marmor and Oberlander 2011; Sapat 2004). While some research on state cooperation has focused on administrative capacity and local interest group pressure to explain variation, partisan identification has consistently been employed as a major predictor of state response. The combination of state prerogative and polarized policy often resulted in partisan brinksmanship concerning Medicaid expansion.

However, some Republican controlled states, including Ohio, Arizona, and New Mexico, have moved to expand Medicaid. Most recently, Republicans in the Virginia State Legislature voted alongside state Democrats to send a Medicaid expansion bill to the Democratic Governor’s desk. This project has aimed to explain these surprising spurts of bi-partisanship, which occur in spite of significant national polarization. Chapter three and chapter four illustrated how polarization lays the groundwork for state-level deviation from national partisan agendas by increasing the federal governments reliance on coercion and encouraging federal policy decentralization to like-minded agents. Chapter five illustrates the outcome of this combination by showing that response to federal policy often hinges not on partisan identification but instead on the unique constituent preferences organized by the distinct state geographic boundaries under American federalism.

However, the case of the ACA presents an exceptional case for understanding the scope of the potential for bi-partisan policy implementation. Unlike most of the policies analyzed in chapter five, the ACA continued to polarize long after passage, with national Republican’s campaigning to repeal the federal law. Further, the distance between national partisan goals and state-level partisan ideology alone cannot explain the variation in response to Medicaid

expansion. Ohio, New Mexico, and Arizona all registered 2014 Republican party ideology scores that were more conservative than the mean for Republican controlled legislatures (Shor and McCarty 2015). For these reasons, the case of Medicaid expansion presents a critical case for understanding the potential for bi-partisan compromise between state and federal agents during periods of national partisan polarization. What conditions encouraged conservative states to deviate from national partisan agendas and engage in bipartisan policy implementation, when there was significant pressure from the national party to polarize? I argue that, while the ideological distance between the federal administration and the dominant state party can encourage resistance or cooperation independent of partisan identification, this response is still rooted in the electoral motivations of state politicians. Significant competition for control of state institutions can mitigate the impact of more extreme local constituent preferences on state response, producing patterns in resistance and cooperation that result in conflict between state agents and their own partisan allies at the national level.

I investigate the role of inter-party competition and polarization in shaping state response to Medicaid expansion by first developing a new measure of state participation in Medicaid expansion that uses concrete state actions regarding expansion. I hypothesize that the more state partisan ideology and polarization levels move towards extremes, the more likely state partisans are to resist the agenda of their national partisan rivals. However, higher levels of in-state party competition for control of state institutions should mitigate the impact of extreme ideology scores. In other words, as the risk of losing control of state policy-making institutions increases due to partisan competition, even strong ideological opposition may give way to negotiation in order to obtain control over the critical initial policy implementation phase. I find that while in-state partisan polarization has no discernable impact on state response to Medicaid expansion,

variation in state legislative chamber majority ideology does, with more conservative ideal points corresponding to higher probabilities of resistance. However, higher levels of within state partisan competition for chamber control can mitigate this impact, encouraging more negotiated responses. In practice, this means that successfully negotiated bi-partisan policy implementation may even occur among highly ideological partisan opposition, so long as they face strong inter-party competition.

### **Explaining Variation in Joint Implementation and State Response**

As Martha Derthick argued in 1987, “Bargaining and negotiation, not command and obedience, appear to characterize the practice of intergovernmental programs now as in the past” (Derthick 1987). In other words, states retain the option to respond national mandates via a multitude of policy tools that allow them to negotiate or resist federal involvement, resulting in significant variation in policy regimes (Bowling and Pickerill 2013). *Cooperative* responses occur when state governments opt to accept the funding and terms offered by a national policy, combining federal wealth and oversight with some degree of state flexibility (Greer 2011; Greer and Jacobson 2010; Scicchitano and Hedge 1993; Woods 2008). *Fractious* responses are produced when weak state administrative or fiscal capacity, partisan conflict, or policy goal disagreement encourage state leaders to oppose national policy (Thompson and Gusmano 2014).

*Fractious* responses can be further divided into two categories of resistance to federal policy. When a state uses Congressional lobbying and executive agency bargaining to obtain policy concessions, it is categorized as a *negotiated* response (Derthick 1987; Dinan 2011, 2014; Thompson and Gusmano 2014). Under the ACA, six states opted to expand Medicaid under expansion waivers that allowed them to negotiate key aspects of their Medicaid program. Negotiated implementation allows states to repackage cooperation, moving it more in-line with

their own ideological agenda and making it more palatable to voters who may be opposed to bi-partisan efforts.

Alternatively, when states obstruct policy implementation by delaying decisions (E. A. Miller and Blanding 2012) or rejecting funds entirely (Gamkhar and Pickerill 2011, 2012; Nicholson-Crotty 2012) they adopt a stronger *resistance* response. Seven states returned ACA implementation grants: most notably, Kansas, Oklahoma, and Wisconsin together returned a total of \$122 million in Early Innovator Grants (Cauchi 2016). In addition, states can actively work to resist federal policy goals by enacting laws to prevent preemption of authority from the state, directing funds away from federally mandated projects (Nicholson-Crotty 2004), using federal regulatory powers to run counter to policy goals (Bulman-Pozen and Gerken 2009), and litigating to prevent implementation. Resisting states collaborated on numerous lawsuits challenging the ACA and actively worked to undermine the ACA by passing laws that blocked funding (five states), challenged the constitutionality of the law (twelve states), and called for repeal (seven states) (Cauchi 2016; Health Innovations State Law Database 2016; Health Reform 2011-13 State Legislation Database 2014; Healthcare Reform - 2014 Legislative Database 2015). States use tactics of resistance to prevent policy adoption and signal the dominant party's ideological agenda to partisan voters and donors.

State's ability to negotiate and resist federal mandates is a direct product of the inability of the federal government to enforce national goals that run counter to state-level administrative capacity, partisan agendas, and constituent interests (Cho and Wright 2004; Derthick 1987; Ingram 1977; Scicchitano and Hedge 1993; R. B. Stewart 1977). Higher state administrative capacity within particular policy arenas improves the likelihood of successful policy implementation and increases the chance of states obtaining federal grants (Derthick 1970;

Manna and Ryan 2011; Oates 2005; Peterson 1995; Rich 1989). Beyond state capacity, goal congruence between state and national governments can also enhance joint implementation and foster cooperation (Nicholson-Crotty 2004). In addition, conflicts between rival parties at the state and federal level can encourage states to delay implementation or refuse grants as a political signal (E. A. Miller and Blanding 2012; Nicholson-Crotty 2012; Volden 2007). Conflicts between rival partisans within a state can result in legislative gridlock, preventing states from taking actions necessary to implement joint policies (Binder 2003; Krehbiel 2010; Mann and Ornstein 2012). Finally, local constituent preferences, particularly local businesses and interest groups, drive state partisan goals and play a significant role in shaping state use of federally devolved regulatory powers (Cline 2003; Helland 1998; Scholz 1986; Thompson and Scicchitano 1987).

Current research on state response to the ACA finds support for these state-level factors as influential in this policy area. Haedar and Weimer find that existing state experience regulating health insurance increased the likelihood of establishing a state-based health insurance exchange (Haeder and Weimer 2013, 2015). Jacobs and Callaghan similarly find that state administrative capacity, fiscal power, and past experience, including experience negotiating with federal agents, affect decision-making with regard to Medicaid expansion (Callaghan and Jacobs 2014; L. R. Jacobs and Callaghan 2013). While need levels in the state have been shown to have no discernable impact on Medicaid expansion (Barrilleaux and Rainey 2014), public interest organizations have exhibited a positive effect on state decisions to expand Medicaid, while organized business interests have a countervailing but smaller negative effect (Callaghan and Jacobs 2016). Hertel-Fernandez *et. al.* find that the presence of members of the health industry on state chambers of commerce has a positive impact on expansion, while cross-state networks

of conservative organizations have a negative impact (Hertel-Fernandez, Skocpol, and Lynch 2016).

Partisan control of elected state institutions, including control of legislative chambers and the governor's offices, was a consistent predictor of state ACA decision-making in all of these studies. This is unsurprising, as the national partisan agenda is not constructed in a vacuum but builds upon the interests of a coalition of states. Thus, cooperation with a shared national agenda is frequently a product of not just national partisan pressure but also state constituent preferences. However, research has shown significant variation in both citizen ideology and state partisan ideology relative to national measures (Shor and McCarty 2011; Tausanovitch and Warshaw 2013). The restricted geography and unique preferences of state constituencies may drive state-party ideology away from the agenda associated with a shared partisan label. Shor emphasizes the impact of this variation when he argues that legislator ideology best predicts voting on ACA related legislation within states, trumping even partisan attachment (Shor 2017).

When agendas diverge, national parties have a number of mechanisms to exert pressure on state agents. Association with a national party provides a key label associated with specific policy commitments (Aldrich 1995; Cox and McCubbins 2005; Petrocik 1996) and access to funding sources required for successful campaigns (Hogan 2001; Stepleton 2016). Organizations associated with national parties are often eager to influence state politicians through shared resources and electoral threats (Farnam 2012; Hertel-Fernandez, Skocpol, and Lynch 2016). Finally, the growing levels of negative partisanship have increased straight-ticket balloting in state legislative races and increased the electoral risk associated with cooperation with the rival party (Abramowitz and Webster 2016; Rogers 2016). These mechanisms can create conflict between the national partisan agenda, and the unique state administrative capacity, state partisan

agenda, and local constituent preferences that condition state response (Beer 1978; Berry 1984; Woods 2008).

### **Partisan Competition and Constituent Preferences**

I argue that partisan electoral competition influences when and where local constituent preferences will be successful in producing cross-pressure and creating conflict between state agents and national partisan allies. One essential function of a political party is to resolve the problems associated with variation in policy preferences amongst its members by addressing the partisan agenda towards an electoral majority (Aldrich 1995; Downs 1957). During periods of high polarization, the national political parties attempt to increase the visibility of the distinctions between partisan agendas by adopting more extreme ideological stances and resisting policy adopted by partisan opposition. The institution of national political parties has pushed these distinctions into the states and created electoral incentives for state politicians to represent the agenda of national partisan allies within state governments. However, the institution of American federalism organizes voter policy preferences at the state level, resulting in significant variation between state constituent preferences, and state partisan ideology measured using state legislative roll-call votes (Shor and McCarty 2011; Tausanovitch and Warshaw 2013).

The *Resistance Hypothesis* suggests that state officials will resist federal policy when they confront reinforcing electoral incentives. In other words, state politicians are more likely to resist federal law when the preferences of both their local constituents and their national political allies encourage resistance. However, the *Negotiation Hypothesis* argues that state politicians who are cross-pressured by the electoral incentives associated with these two institutions will engage in negotiation with partisan rivals at the national level. The increase in partisan polarization has produced the necessary components for this conflict to occur by encouraging

coercive federal policy that limits state discretion and producing increased incentives for partisan-oriented federal decentralization of policy. The result is that more moderate state parties should be more willing to cooperate with national partisan opponents and engage in joint implementation because their interests are more aligned with partisan allies, leading to Hypothesis 1.

*Hypothesis 1: More extreme state partisan ideal-point scores should drive increased resistance to national policies adopted by the rival party, while more moderate state partisan ideal-point scores should produce negotiation or cooperation with the rival party.*

Extreme partisan ideology scores that reflect partisan divisions at the national level result in reinforcing electoral incentives, resulting in resistance under the *Resistance Hypothesis*.

Alternatively, moderate partisans are cross-pressured by the competing demands of local constituents and national partisan allies and are more likely to negotiate with the national rival party per the *Negotiation Hypothesis*.

However, state parties are not only negotiating with Washington but also with partisan rivals in the state, whom they directly confront in elections. An increase in within-state polarization, measured by the distance between state party ideal points, increases the likelihood that partisan veto points will act to block changes to the current status quo resulting in gridlock (Binder 2003; Krehbiel 2010; Mann and Ornstein 2012). Medicaid expansion requires direct action on the part of state politicians and thus gridlock will result in state resistance to national mandate in favor of the current state status quo, resulting in Hypothesis 2:

*H2 Increases in within-state partisan polarization should drive increased resistance to national policy that requires positive state action.*

Hypothesis 1 and 2 argue that parties will pursue policy implementation agendas reflective of their state ideology, independent of the goals associated with their partisan label.



However, when state and national goals diverge, there are still mechanisms in place to encourage states to follow the national lead, including partisan brand, resources and the threat of primary challengers. The effects of partisan attachment conflicting with political ideology are clearly seen within the realm of Medicaid expansion. While Shor has shown a strong association between individual state legislator ideal points and voting on the ACA (Shor 2017), there is no statistical difference between the Republican party ideal points for cooperating/negotiating Republican controlled state legislatures and resisting Republican controlled state legislatures. Why are some conservative state republicans willing to buck their national co-partisan's agenda and implement Medicaid expansion while others toe the line?

Jones, Bradley, and Oberlander characterize the Republican decision between cooperation/negotiation tailored to local needs, and resistance that follows the national partisan agenda as a wager (Jones, Bradley, and Oberlander 2014). In doing so, they provide an effective framework for understanding the role of partisan competition in shaping state response. A wager involves a reward associated with a potential risk. In the case of adopting state control and pursuing local agendas, state politicians gain critical control of initial policy implementation at the risk of antagonizing national allies who control party resources and can encourage primary competition. When state parties choose to pursue the national partisan agenda and resist mandates from the opposition, they entrench their position with the national base but forfeit policy control and potentially increase the risk loss in the general election.

However, this wager is not made in a vacuum. While information asymmetries certainly exist, state parties have some knowledge about the threat of partisan electoral competition for control of state institutions. I argue that if partisans perceive a risk of losing control of state institutions in subsequent elections, they may act to obtain a more favorable initial policy

through negotiation with national opposition in spite of extreme ideology and in-state partisan polarization. The result is that higher state inter-party competition should mitigate the effects of ideological extremes and instead encourage more bi-partisan responses, leading to Hypothesis #3:

*Hypothesis 3: Increased partisan competition for control of state institutions should mitigate the impact of more extreme levels of ideology and within-state polarization, resulting in lower levels of resistance.*

Hypothesis 3 challenges existing literature on polarization at the national level and within the American states. Frances Lee has shown that increased partisan competition for congressional majority control has encouraged national politicians to draw clearer distinctions between the parties. The main mechanism for drawing distinctions is unified partisan resistance to the policies of the rival party, resulting in increased partisan polarization. She extends this analysis to the states, finding that increasing levels polarization between state political parties corresponds to higher levels of competition for partisan control of state institutions. This finding is robust to a variety of measures of state competition (Lee 2016) leading to *Hypothesis 3A*:

*Hypothesis 3A: Increased partisan competition for control of state institutions should enhance the impact of more extreme levels of ideology and within-state polarization, resulting in higher levels of resistance.*

## **Methods**

To measure implementation progress as the dependent variable, I construct an annual state Medicaid Implementation Index using only concrete actions related to ACA implementation including expansion decisions, grant requests, litigation participation, state legislation and waiver requests. States are coded for a baseline response of 0 and additional actions including Medicaid expansion itself add or remove points. Actions are weighted by the author according to degree of severity within the state (adopting Medicaid expansion vs

receiving a grant) and impact (state only laws vs. legal challenges that could impact more states) and shift the baseline state score towards cooperation (positive scores) or resistance (negative scores). Scores are summed for each state and year and the full coding scheme is listed in the Appendix B.

Ideal point estimates generated by Boris Shor and Nolan McCarty (Shor and McCarty 2011, 2015) are used to measure partisan polarization and state partisan ideology. The ideal point estimate for the chamber majority party is used to assess the validity of *Hypothesis #1*. Scores range from -1.65 to 1.34 and negative scores correspond with more liberal agendas while positive scores correspond with more conservative chambers. The expectation is that as state-level majority party ideology becomes more conservative, then the likelihood of state resistance should increase. Within-state partisan polarization is measured as the distance between a chamber's parties' ideal point estimates and is used to test *Hypothesis #2*. The mean polarization score for both chambers is 1.6 with a standard deviation of 0.51 for the lower chamber and 0.53 for the upper chamber. The expectation is that as state legislative chamber polarization increases, the likelihood of gridlock will increase, resulting in reduced cooperation and negotiation and higher levels of resistance.

State partisan competition is calculated using a partisan competition index for each chamber. Chamber electoral risk is measured annually using the ratio of minority gains in the subsequent year divided by the gains required to switch the majority, normalized by the chamber size. This results in a measure of risk scored between 0 and 2. If the current majority gains enough seats to win the entire chamber in the subsequent year, it is scored as a 0. Conversely if the minority flips the entire chamber and has total control in the subsequent year, it is scored as a 2. A score of 1 indicates that a minority was able to obtain a simple majority in the chamber in

the subsequent year and all scores above 0.5 indicate minority gains while scores below 0.5 indicate majority consolidation. I assume that knowledge of risk is cumulative and based on previous known performance. To account for this collective knowledge, the chamber competition index employed in the model averages the annual risk factors for all years since a redistricting year. The current years risk factor is excluded from the average to avoid the assumption that legislators are aware of pending losses prior to the election. The chamber competition index is centered for easier analysis of interaction effects.

I have constructed this index to build upon previous measures of partisan competition, most notably the classic Ranney Index, which focuses on legislative control, gubernatorial vote share and durability. While the Ranney Index focuses on state control, this measure instead employs metrics specific to a given chamber. By moving past control and incorporating the percentage of seats needed for a chamber flip, the measure attempts to improve specificity with regard to the actual risk faced by a party in a given state. While Holbrook and Van Dunk advocate for the use of election returns as a more accurate measure (Holbrook and Van Dunk 1993), Shufeldt and Flavin highlight the distinction between these concepts. Election returns are designed to assess specific legislator behavior in response to in district competition, while the Ranney Index and my own measure are designed to measure partisan competition broadly (Shufeldt and Flavin 2012). Measures of broad partisan competition, like chamber turnover risk, are appropriate, as this study focuses on elite partisan decisions, including the decisions of party leadership with critical gate keeping powers in state legislatures, not just the accumulation of decisions of individual legislators.

Models incorporate a number of control measures relevant to the current literature on state response. State administrative capacity is measured using the state's annual operations

budget per capita, obtained from the US Census State Government Finances Survey. Existing literature has shown that higher levels of administrative capacity is correlated with an increased likelihood of negotiation or cooperation to federal law. State per capita income is used to measure the perceived economic burden states confront under Medicaid expansion. There are two potential outcomes associated with economic burden. First, higher need levels associated with lower per capita income states may encourage adoption of Medicaid expansion in order to respond to that need. Alternatively, states with higher per capita income may adopt Medicaid expansion because they possess larger tax bases and can support the costs associated with the federal law. Finally, the influence of key in-state lobbies is measured using the amount of money spent on health professional, health services and hospital lobbies per capita (Follow The Money - Lobbying Database n.d.). The expectation is that more money spent to lobby the state government in favor of Medicaid expansion might encourage politicians to adopt the law in spite of partisanship or broader ideological agendas. Gubernatorial control is measured as a binary variable, where 1 indicates Republican control of the governor's office (State Partisan Composition 2016). A binary variable is included to account for a divided legislature, where 1 indicates a divided legislature and 0 indicates unified partisan control of both chambers. Finally, fixed effects for year are employed to account for annual variation.

Two model specifications are presented and include all explanatory and control variables, where the dependent variable is the raw Medicaid implementation index score for each year from 2011-2014.<sup>3</sup> Employing the raw score instead of the response category permits an analysis of the

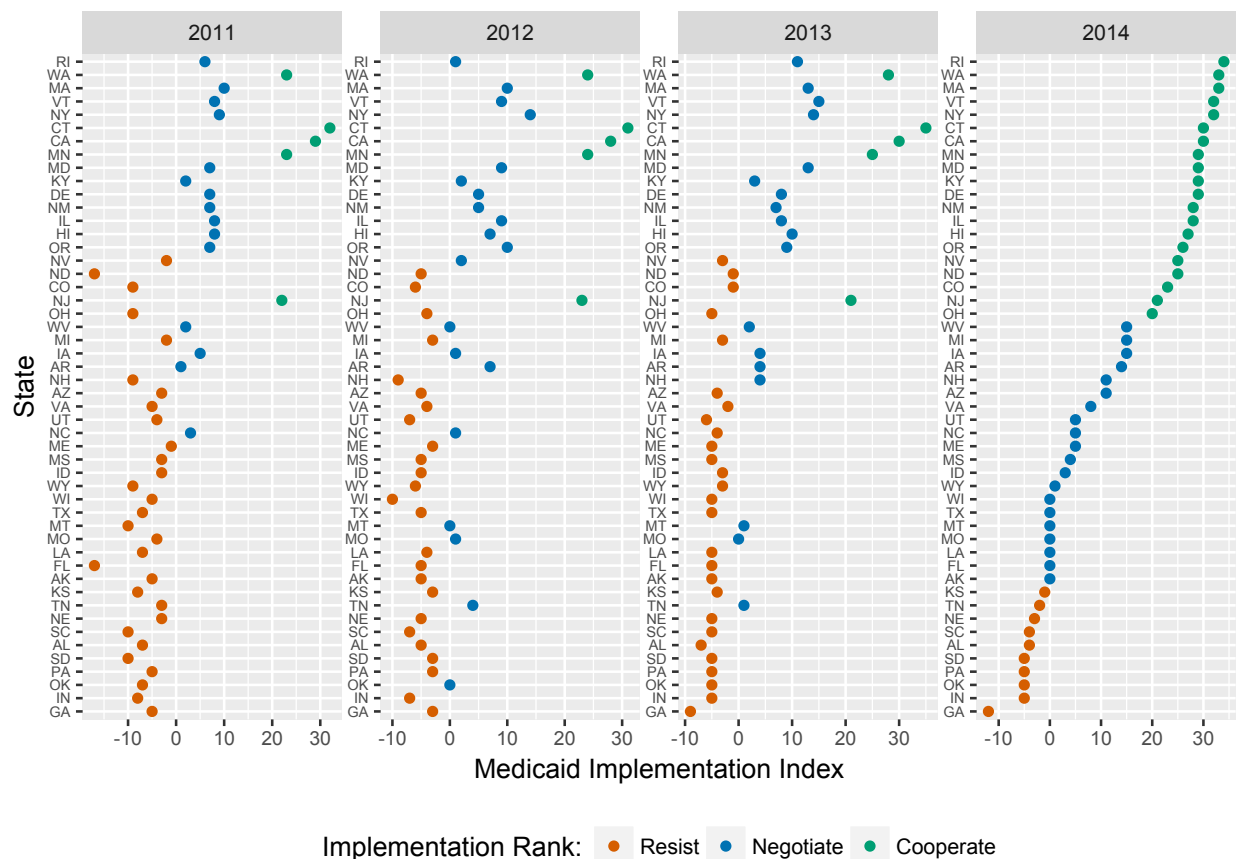
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<sup>3</sup> A number of states were dropped from the final analysis due to missing data. Nebraska's non-partisan legislature precluded them from participation in the models. Further Kentucky (2011, 2012, 2013, 2014), Massachusetts (2011, 2012) and Iowa (2013, 2014) are excluded due to missing partisan ideal point data. I am able to recover some data by assuming that an individual

full variation of state response for each modeled year. The unit of analysis within the model is the state legislative chamber by year, with Model 1 using lower chamber ideal point estimates while Model 2 includes upper chamber ideal point estimates. Collinearity between chamber ideal points estimates under unified government prevents a joint analysis of both chambers.

## Data

Figure 6.1: Annual Medicaid Implementation Index



Source: Author's Calculations

chamber is consistent within a session and that upper and lower chambers under the same partisan control are comparable. The correlation for Democratic parties between similarly controlled chambers is 0.90 while the correlation coefficient for Republican parties in similarly controlled chambers is 0.75. The following states were added to the analysis under this assumption; Senate: MA (D) 2013-2014, MN (D) 2011-2014, TX (R) 2011-2014, House: MO (R) 2011-2014. Removing these states diminishes statistical power but does not substantially change the models results.

Figure 6.1 plots the annual Medicaid Implementation Index score for each year of the study. To better identify state paths to implementation, states are ordered using their 2014 implementation score. Colors are used to indicate regions of *Resistance* (-), *Negotiation* (+) and *Cooperation* (+20) with the administration in Washington. The coding scheme is consistent but the expansion deadline of 2014 looms large as a critical shift due to concrete decisions to expand occurring during that year. States expanding Medicaid received twenty points towards their implementation score and the large number of expanding states in 2014 shifts the metric towards cooperation.<sup>4</sup> States with a response measure over 20, like California (30) and New York (32), can be seen as cooperating with the federal government while states scoring below 0, like Alabama (-4)<sup>5</sup> and Georgia (-12), are considered resisting despite political rhetoric to the contrary. States between 20 and 0 are considered negotiated states and range from states like Arkansas (14) and Iowa (15) that implemented under waivers to Idaho (3) and Mississippi (4) where implementation is still pending but minor positive actions have been taken.

The pre-expansion (2011-2013) measure codes all states at a baseline of 0 and early implementing states again receive +20. Again, anything below 0 can be seen as resistance while anything above 20 can be seen as cooperation. Here states like Connecticut and California rank quite highly (29 and 32 respectively in 2011) due to early expansion. Meanwhile states like North Dakota (-17 in 2011) and Florida (-17 in 2011) rank low due to litigation participation and

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<sup>4</sup> The 20 points assigned to Medicaid expanding states was selected by the author and is designed to be sufficiently large that no state that actually expanded Medicaid will be coded as resisting due to other associated actions.

<sup>5</sup> It is important to note here that Alabama is ranked as resisting despite numerous statements from the Governor concerning potential Medicaid expansion because no actions have been taken. While rhetoric federalism is a clear contributor to the national conversation about policy (see: Leonard 2011), I opt instead to focus on the implications of polarization and competition on concrete policy adoption.

anti-ACA legislation. The implementation index is calculated annually from 2011-2015, though only data through 2014 is used within the model due to restrictions on state ideal-point data.

The top fifteen 2014 index scores (RI-OR) belong to states that never dipped below negotiation into resistance. Meanwhile the bottom seventeen state implementation scores (WI-GA) for 2014 belong to states that only rarely move into the negotiated region. The remaining eighteen states constitute what can be termed Medicaid battleground states that seem to shift between cooperation and resistance fluidly.

**Table 6.1: States by Implementation Category and Year**

	2011	2012	2013	2014
<b>Cooperate</b>	CA, CT, MN, NJ, WA	CA, CT, MN, NJ, WA	CA, CT, MN, NJ, WA	CA, <b>CO</b> , CT, <b>DE</b> , <b>HI</b> , <b>IL</b> , <b>KY</b> , <b>MA</b> , <b>MD</b> , MN, <b>ND</b> , NJ, <b>NM</b> , <b>NV</b> , <b>NY</b> , <b>OH</b> , <b>OR</b> , <b>RI</b> , VT, WA
<b>Negotiate</b>	AR, DE, HI, IA, IL, KY, MA, MD, NC, NM, NY, OR, RI, VT, WV	AR, DE, HI, IA, IL, KY, MA, MD, <b>MO</b> , <b>MT</b> , NC, NM, <b>NV</b> , NY, <b>OK</b> , OR, RI, TN, VT, WV	AR, DE, HI, IA, IL, KY, MA, MD, MO, MT, <b>NH</b> , NM, NY, OR, RI, TN, VT, WV	<b>AK</b> , AR, <b>AZ</b> , <b>FL</b> , IA, <b>ID</b> , <b>LA</b> , <b>ME</b> , <b>MI</b> , MO, <b>MS</b> , MT, NC, NH, <b>TX</b> , <b>UT</b> , <b>VA</b> , <b>WI</b> , WV, <b>WY</b> ,
<b>Resist</b>	AK, AL, AZ, CO, FL, GA, ID, IN, KS, LA, ME, MI, MO, MS, MT, ND, NE, NH, NV, OH, OK, PA, SC, SD, TN, TX, UT, VA, WI, WY	AK, AL, AZ, CO, FL, GA, ID, IN, KS, LA, ME, MI, MS, ND, NE, NH, OH, PA, SC, SD, TX, UT, VA, WI, WY	AK, AL, AZ, CO, FL, GA, ID, IN, KS, LA, ME, MI, MS, <i>NC</i> , ND, NE, <i>NV</i> , OH, <i>OK</i> , PA, SC, SD, TX, UT, VA, WI, WY	AL, GA, IN, KS, NE, OK, PA, SC, SD, <i>TN</i>
Notes: State categorization by year, based on the continuous measure of state response. Cooperate >20, Negotiate <20 & >-1, Resist<0 Style changes indicate a change from the previous year: <b>Denotes a two tier increase.</b> <b>Denotes a one tier increase.</b> <i>Denotes a two tier decrease.</i> <i>Denotes a one tier decrease.</i>				

Table 6.1 highlights the shifts that take place in the twenty Medicaid battleground states by presenting states organized by year and expansion status for the study period. **Bold font** is used to emphasize increased cooperation, *italics* for increased resistance, and underlines indicate



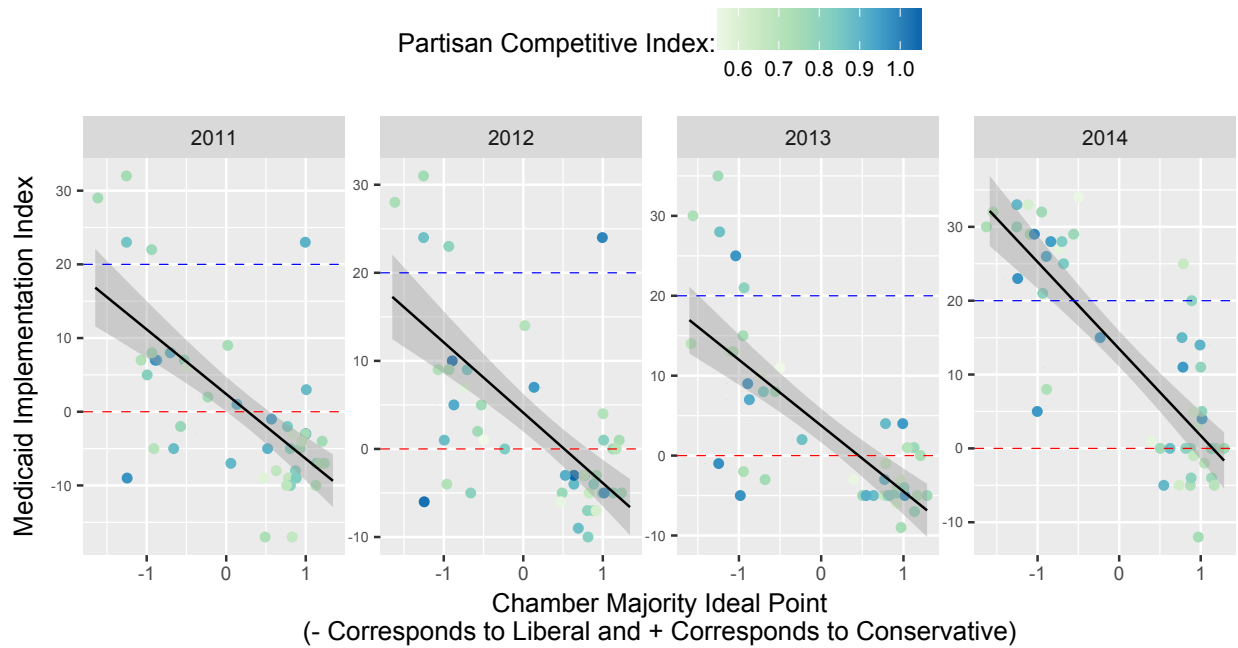
a direct shift from resistance to cooperation, or vice versa. Arkansas, Iowa and West Virginia are stable negotiating states with the former two states adopting expansion under waivers and the latter actively participating in *King v. Burwell* to challenge the law. Colorado, North Dakota, Nevada and Ohio top the list for surprising moves, jumping from numerous concrete acts of resistance to adopting Medicaid expansion during the 2014 expansion season. While a few states remain as surprise cooperators to Medicaid expansion, the index actually foreshadows certain alleged surprises including Kentucky and New Mexico's decisions to adopt as well as Montana, Arkansas, Iowa and West Virginia's decisions to implement a more negotiated adoption.

## **Results**

Comparing the Medicaid implementation index and the state chamber majority ideal points reveals a consistent and statistically significant correlation for all years. The Pearson correlation coefficient for the lower chamber increases in magnitude from -0.74 in 2011 to -0.82 in 2014 and the upper chamber increases from -0.62 in 2011 to -0.81 in 2014. All correlation coefficients are statistically significant at the 0.05 level. The negative correlation indicates that more conservative states are more likely to resist Medicaid expansion. Correlations between within-state polarization scores and the Medicaid implementation index fail to achieve statistical significance.

Figure 6.2 plots the upper and lower chamber majority ideology scores against the annual Medicaid Implementation index and point colors are scaled according to level of partisan competition for the legislative chamber. The bivariate regression line is included to better illustrate the nature of the relationship, and the associated bivariate OLS coefficients are statistically significant.

Figure 6.2: Implementation Score vs Chamber Majority Ideal Point



Source: Medicaid Implementation Index: Author's Calculations  
 Chamber Ideal Point: Shor, Boris, and Nolan McCarty. 2011.  
 "The Ideological Mapping of American Legislatures."  
 American Political Science Review 105(03): 530–551.

While the slopes are dominated by the effect of chamber control, with raw data clustered at the extremes, more moderate chamber ideologies still track well against the expected slope. Further, there are a number of states at the extremes that fall farther from the predicted slope, indicating that state-level ideology is not the sole predictor of state response. The abundance of more competitive chambers located within the negotiation interval between implementation scores of 0 and 20, especially in 2014, provides preliminary evidence for a potential interaction between these variables.

To examine this interaction, I use ordinary least squares regression to model the annual state Medicaid implementation index score on measures for polarization, party ideology, partisan chamber competition and economic controls with fixed effects for each year. Models are separated for the upper and lower chamber and are listed in Table 6.2. Newey-West robust

standard errors are used to correct for the heteroskedasticity of error terms and the first-degree auto-correlation revealed during post-hoc testing (Newey and West 1987, 1994).

**Table 6.2: Regression Results:  
Effect of Chamber Ideology, Polarization and Partisan  
Competition on Medicaid Expansion (2011-2014)**

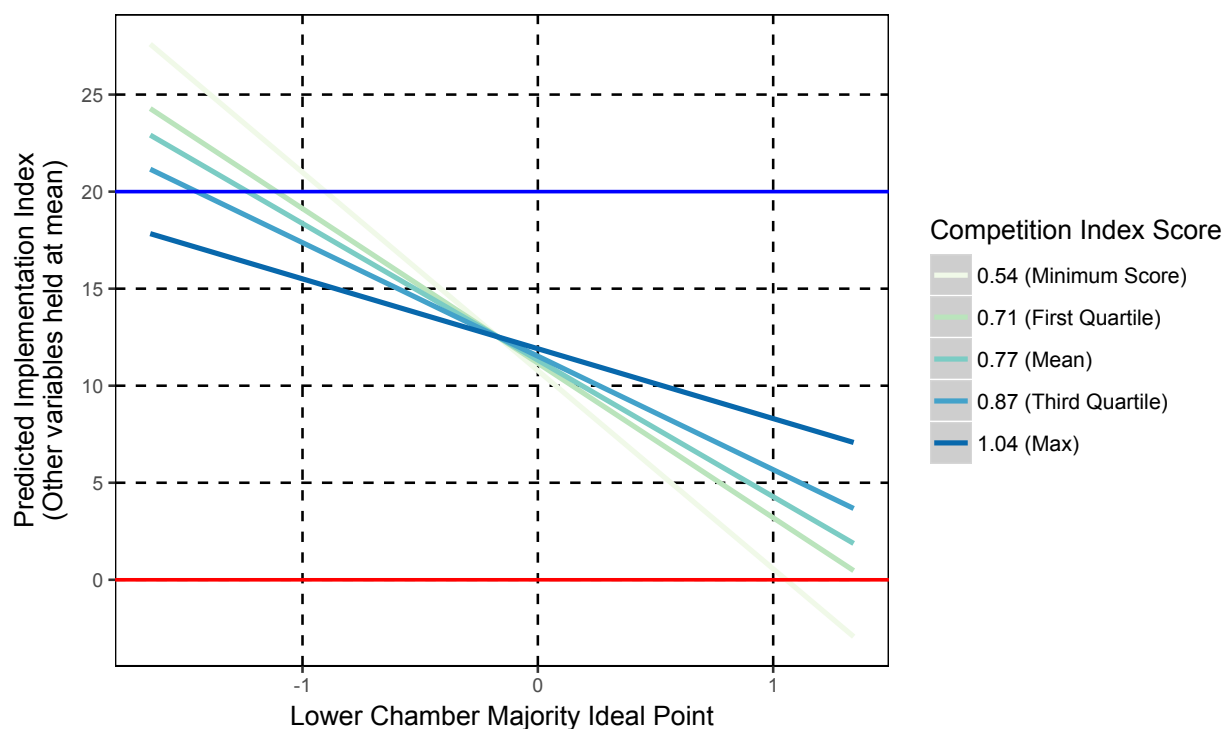
	Model 1 Lower Chamber	Model 2 Upper Chamber
(Intercept)	-13.2 (7.35)	-9.14 (6.88)
Income (per Capita)	0.0006 (0.0003)	0.0006 (0.0003)
Operations Budget (per Capita)	-0.0001 (0.0005)	-0.0003 (0.0005)
Health Donations (per Capita)	0.74 (1.32)	0.83 (1.35)
Republican Governor	-4.49 (1.96)*	-6.61 (1.8)*
Divided Legislature	-4.8 (2.99)	-9.32 (3.63)*
Chamber Majority Ideal Point	-7.04 (1.15)*	-6.26 (1.23)*
Chamber Election Risk Score	23 (19.81)	23.38 (21.12)
Chamber Polarization	2.15 (1.47)	0.68 (2.1)
Year-2012	1.4 (0.71)	1.32 (0.7)
Year-2013	1.05 (0.83)	1.55 (1.03)
Year-2014	9.85 (1.57)*	10.3 (1.58)*
Majority Ideal Point * Election Risk	13.23 (4.94)*	6.76 (5.49)
Polarization * Election Risk	-12.9 (14)	-10.2 (14.7)
N	188	188
Adjusted R <sup>2</sup>	0.52	0.5
Note: Table entries are OLS regression coefficients, Newey-West HAC corrected estimated standard errors in parentheses, *p<.05 two-tailed, Lower Chamber-F = 16.48 (p ≤ 0.000), Upper Chamber-F= 15.19 (p ≤ 0.000);		

For both models, more conservative chambers are more likely to produce state level resistance to Medicaid expansion. Under average partisan competition (competition index score of 0.78 or slight minority gains) a one standard deviation increase in chamber conservatism (a 0.95 shift in the lower chamber or a 0.92 shift in the upper chamber) corresponds to a decline in predicted Medicaid implementation score by around 6 points. However, because the distribution of chamber ideology is nearly bimodal, with ideology scores clustering due to partisan-specific chamber control, it may be more informative to examine a standard deviation shift in a single

party. Looking at only Republican Party ideal point estimates, a one standard deviation increase in chamber conservatism (a 0.38 shift in the lower chamber and a 0.35 shift in the upper chamber) corresponds to a decline in predicted Medicaid implementation score by between two and three points. Democratic parties possess similarly distributed ideal point estimates resulting in similar effects. These results validate Hypothesis 1 by providing evidence that as chamber majorities are further distanced ideologically from their political counterparts in the federal administration, they increasingly negotiate and resist national mandates. Alternatively, as chamber ideologies approach the ideology of the adopting national political party, states are more likely to cooperate with federal agents.

While these shifts are relatively modest, particularly for a one standard deviation shift within a party, the impact of partisan competition on these changes is notable and significant for the lower chamber model. A one standard deviation increase in chamber electoral risk (0.11) reduces the marginal effect of chamber ideology by 1.5, decreasing the likelihood of resistance per unit of chamber ideology change. Figure 6.3 plots the model's predicted implementation index varying both chamber ideology and chamber electoral risk.

Figure 6.3: Predicted Implementation Index vs. Lower Chamber Majority Ideal Point



In Figure 6.3 other continuous variables are held at their means, and the effects of gubernatorial control is fixed as Republican, divided government is fixed at unified legislative control, and year is fixed at 2014. As the figure illustrates, as the lower chamber faces increased risk of partisan turnover, the impact of more extreme partisan ideal points is reduced. In other words, as partisan competition increases, conservative state parties are more willing to entertain negotiation with opposition in Washington, validating *Hypothesis 3* for the lower chamber. The results are similar but not statistically significant in the upper chamber model.

In addition to chamber ideology, the gubernatorial control and divided legislative control have consistent, though not always significant effects. Republican control of the governor's office corresponds to an increase in resistance and a decline in implementation score between 4 and 7 points. While the models vary in their estimate of the impact of gubernatorial control, the difference between the estimated coefficients is not statistically significant. The impact of

divided legislature within the upper chamber model is significant at the 0.05-level and corresponds to an increase in state resistance with an associated decrease in the Medicaid Implementation Index of over 8 points. The coefficient for divided government is not significant for the lower chamber model.

Neither model presents evidence to support *Hypothesis 2*, which argued that polarization would increase the likelihood of resistance, or *Hypothesis 3A*, which argued that partisan competition would magnify more conservative ideal points. Increased within-state polarization has little impact within either model and fails to achieve statistical significance. While the impact of changes in partisan competition on the effect of polarization appear substantial, large standard errors make it statistically indistinguishable from 0. It seems that relative position to negotiators at the national level has a more significant impact than the problem of negotiation at the state level. In addition, the included control variables failed to achieve statistical significance.

## **Discussion**

In 1956, President Dwight Eisenhower made a failed attempt to foster a more homogenous national Republican party guided by his own moderate conservatism. As Rossiter pointed out, he failed to bring around a single Republican who did not already agree (1964). When confronted by a reporter with his failure, Eisenhower cited state party variation as the key problem, claiming there are “no national parties.” He told the press, “There is nothing I can do to say that no one is not a Republican. The most I can say is that in many things they do not agree with me” (Reston 1956). Fast forward more than fifty years and the parties again confront a lack of ideological consistency with their state counterparts. National Republican leadership strongly encouraged state politicians to block ACA implementation within their states, while conservative

media outlets advocated for voting against governors that implemented elements of the law (Erickson 2012).

The political stakes have changed a great deal since Eisenhower's attempted unification of the party, though the conflict between state and federal agents persists. During the implementation of the ACA, the Obama administration confronted much higher levels congressional polarization than Eisenhower. These higher scores indicate a shift towards increased party-line voting within Congress and partisan conflict due to minority resistance (Lee 2016) and corresponding institutional changes that produced more ideologically divided parties through stronger agenda control by party leadership (Cox and McCubbins 2007; Poole and Rosenthal 2011). The expectation is that increased party allegiance should trickle down into state politics, resulting in higher levels of resistance to national when rival parties control federal and state institutions. This study reveals that reality lies somewhere between Eisenhower's failure and the expectation for successful party unity generated by the current level of national polarization.

This is in part because partisan identification and the associated institution of national political parties is not the only mechanism that structures the electoral incentives of state politicians. The *Resistance Hypothesis* suggests that state politicians should resist federal policy when the institutions of national political parties and American federalism encourage reinforcing electoral motivations regarding state resistance. In other words, state parties should resist federal policy when they are at a greater ideological distance from rival partisans in the federal administration (hypothesis 1) or their partisan opposition within their state (hypothesis 2). Alternatively, the *Negotiation Hypothesis* claims that when state partisans are cross-pressured by

competing electoral motivations associated with partisan identification and local constituent pressure, they are more likely to negotiate with national partisan rivals.

The models confirm the relationship outlined in *Hypothesis 1* regarding cooperation and resistance. In both models, as chamber majorities move towards ideological extremes state majorities are more likely to adopt the policy agenda associated with their national partisan allies. When the electoral incentives associated with local policy preferences reinforce the existing pressure from national partisans to pursue the national party's agenda, then state politicians are more likely to get in line behind their national partisan allies, confirming the *Resistance Hypothesis*. Alternatively, as state parties become more moderate, states are more likely to respond to national mandates with negotiation tactics. Moderation by state parties is a direct product of the unique state constituent preferences organized by American federalism and creates distinctions between local partisan ideology and national partisan ideology. As a result, partisans at the state level will experience cross-pressure due to the conflict between local goals and national partisan ideology and will respond by engaging in negotiation, potentially with partisan rivals, confirming the *Negotiation Hypothesis*.

While negotiation is likely to occur due to the conflict between local goals and national partisan agendas, the role of partisan competition indicates the potential for bi-partisan compromise even among more ideologically extreme state parties. The models show that as competition for chamber control increases within the state, the impact of more extreme ideological agendas is mitigated on both sides of the aisle. Under increasing electoral pressure from their in-state partisan opponents, both Republican and Democratic majorities are more likely to enter the range of responses associated with negotiation.



The mechanisms for this shift are directly related to the relationship between the institutions of American federalism and political parties and the electoral incentives that state politicians face when crafting policy. Republican and Democratic parties facing low risk of chamber turnover are more willing to double down on national agendas in spite of more moderate local constituencies. The low risk of loss reduces the electoral incentives associated with local preferences. Consequentially state politicians will instead work to reduce the likelihood of strong primary challengers and shore up support from national funding sources by pursuing the national agenda. Alternatively, partisan competition for control of state institutions can make local concerns more salient as they are likely to constitute a major campaign issue. The result is that more conservative parties facing strong interparty competition will be more willing to engage in negotiation because it may provide a bulwark against partisan competition in the election by winning over more moderate voters. In addition, a negotiated response can provide critical initial policy control, especially when they run the risk of losing that control to partisan opposition in the next election cycle. Finally, conservative Republican state parties that engaged in negotiation and cooperation with the Obama administration can rename programs to obscure cooperation (as was the case with Kentucky's Kynect program) or rely on alternative conservative credentials to fend off primary challengers.

While this finding appears to challenge Lee's finding concerning polarization, the conflict is superficial when you consider the dual institutions associated with structuring state incentives. With regard to Medicaid expansions, partisan competition encouraged less polarized responses relative to the national political parties. However, that does not rule out the potential for state parties to carve out their own distinctions due to high levels of competition. Further, those distinctions will inherently be distinct from the distinctions established by the national

political parties due to the significant variation in constituent preferences organized under the institution of American federalism. Put simply, while a hardline on Medicaid expansion may be a viable partisan distinction for Alabama Republicans to draw, in Ohio it may cost the party the general election due to variation in local concerns. However, this does not preclude Ohio from drawing its own distinctions. Polarization can occur at both the state and federal level due to increasing competition, but variation in the organization and representation of local preferences due to American federalism will result in distinct lines being drawn, leaving room for bi-partisan cooperation between governmental levels.

Beyond Medicaid expansion, the decentralization of policy implementation has historically been a consistent political tool and both parties have caught the baton in turn (T. J. Conlan and Posner 2011; Freeman and Rogers 2007; L. R. Jacobs and Skocpol 2014). This chapter attempts to explain the scope and motivation behind state reaction to these mandates, specifically within a polarized partisan context. Future research must expand into more policy arenas in order to confirm that Medicaid expansion is not merely a unique policy case. The Medicaid Implementation Index represents a methodological starting point for this research.

Finally, the long-term impact of the decentralization of polarized public policy remains critically important, as evidenced by the current ACA repeal debates. For Medicaid expansion, state resistance to national partisan agendas has fostered bipartisan implementation, resulting in governors from both parties actively resisting repeal efforts that undermine Medicaid expansion (Burns and Martin 2017; Sullivan 2017). If this pattern of polarized decentralization and highly partisan federal mandates continues, then understanding both state response and the role of polarization in the American states will be critically for understanding the dynamics of not only policy implementation but policy durability as well.

## CHAPTER 7

### CONCLUSION: THE QUESTION OF WHO GETS LEFT BEHIND

*“I’m still a Republican. I didn’t leave the Republican Party. The Republican Party left me.”*

-Ohio Governor John Kasich

The highly polarized implementation of the Affordable Care Act brought the tension between national partisan agendas and local constituent preferences to a boiling point. For the six years following the law’s passage, the national Republican Party launched a large-scale operation to litigate, block, and repeal the law. Organizations surrounding the national Republican Party, including news media and conservative think-tanks, pushed Republican state politicians to follow this agenda and resist federal implementation in their state (Erickson 2012; Hertel-Fernandez, Skocpol, and Lynch 2016). However, state politicians from both parties were willing to implement the new federal law, particularly Medicaid expansion. This dissertation argues that the resulting patterns in implementation were a result of the potential for contradictions between national partisan agendas and the distinct local preferences organized under American federalism. When state politicians are cross-pressured and experience divergent electoral motivation to both resist and cooperate with federal policy, it can encourage bi-partisan policy implementation through negotiation in spite of polarization.

The contradictions that encouraged Republican states to cooperate with the Democratic Obama administration created reverberations that echoed in the debates during the Republican Primary in 2016. Ohio Governor John Kasich faced resounding criticism from other Republican presidential primary candidates over his implementation of Medicaid expansion in Ohio. During debates and on the campaign trail, he repeatedly defended his decision to expand Medicaid (Muchmore 2015). At a campaign stop in the fall of 2015, Kasich contested the Republican

Party's stance towards Medicaid expansion, telling the Portsmouth New Hampshire Rotary Club, "we cannot take health-care coverage from people just for a philosophical reason" (Zak 2016). Echoing the conflict between local interests and national parties, Kasich justified his decision by telling students at the University of New Hampshire, "You're an American before you're a member of a political party" (Zak 2016).

In spite of popularity in his home state, Kasich was never able to gain traction during the Republican Primary (Zak 2016). As the epigraph at the start of this chapter suggests, Kasich associated his failure in the primary with the continued ideological polarization of the Republican Party, telling CNN he felt abandoned by a national party (CNN Wire 2018). Ultimately, the 2016 presidential election reinforced the Republican party's commitment to repeal, preserving the tension between Republican states that expanded Medicaid and their national party's agenda. These tensions would prompt Republican Governors, led by Gov. Kasich to disrupt the repeal process in the Senate and work to block the legislation (Berman 2017; Burns and Martin 2017).

However, the failed repeal effort at the national level would not go on to resolve the contradiction. In Ohio, Kasich has avoided endorsing the 2018 Republican Gubernatorial Primary winner Mike DeWine because DeWine has adopted the national Republican Party's policy stance and encouraged restricting or ending Medicaid expansion in OH. As the Democratic Governors' Association pointed out in their statement, "When it comes to party unity, Mike DeWine and the Ohio Republicans have a tough road ahead" (McArdle 2018). In the end, while the presence of bi-partisan compromise directly impacted the Republican Party's ability to repeal the ACA, it did not end the tensions between state governments, which represent a unique local constituency, and the agenda of the national political party. As this dissertation

argues, these tensions are a direct product of national partisan polarization. Understanding the dynamics that produce them is critical for understanding the potential for successful bi-partisan governance in spite of partisan resistance and obstruction at the national level.

### **Federalism and Bi-Partisan Policy Implementation**

This dissertation presents a framework for understanding how the conflicts between national partisan agendas and local constituent preferences can structure disputes between state and federal agents. I argue that state politicians can experience cross-pressure regarding response to federal policy due to the contradictions produced by polarizing national partisan agendas and the distinct local preferences organized under American federalism. This cross-pressure is a direct product of the institutions of national political parties and American federalism structuring electoral motivation to encourage bi-partisan policy implementation between state and federal agents.

In Chapter 2, I established a theory of state response to federal expansion that began with the assumption that conflicts between state and federal governments are rooted in the electoral motivations of the politicians in power at each level. However, the institutions of national political parties and American federalism structure these electoral motivations in distinct, and at times, competing ways. American federalism organizes constituent groups into distinct geographic states, which possess unique mixtures of resources, businesses and citizens, and endows state governments with the power to represent the interests of these unique groups. Alternatively, national political parties produce a common label and partisan agenda, which state politicians are held accountable to by both voters and donors. When these institutions structure electoral incentives that are reinforcing, state politicians will adopt the national partisan agenda and cooperate with national partisan allies and challenge national partisan rivals. However, when

these institutions incentivize competing goals, it can produce a tension between local goals and national partisan agendas. This tension can encourage state politicians to reach across the aisle and negotiate with the rival party to accomplish policy goals.

Chapter 3 argues that the conditions necessary for this tension to occur are inherent in the policies produced under high levels of partisan polarization. The *Federal Hypothesis* argues that federal policy will illicit negative state response when it is either coercive, and limits state discretion in responding to unique local policy preferences or when the national party has polarized around policy. Drawing from a brief history of American federalism, I argue that prior to polarization, national politicians worked to reduce the conflict produced by high variation in local constituent preferences by providing extensive policy latitude to states. Federal policy during the periods known as “dual” and “cooperative” federalism was structured by the perception of significant diversity within national partisan coalitions encouraging national parties to adopt a stance of deference to local preferences in policy implementation, to reduce the potential for conflict.

However, as national political parties polarized, they adopted more distinct and ideologically extreme policy positions. National policy increasingly employed more coercive tactics, including policy floors and ceilings in order to enforce those partisan specific goals at the state level. By coercing states into implementing national policy goals, the polarization opened the door to negotiation and resistance from state agents, due to variation in constituent preferences. Further, the increase in national partisan polarization and resistance to policies of the rival party has encouraged state resistance for purely partisan purposes. Thus, polarization produces the potential for conflict within both institutional arrangements.

Chapter 4 argues that, alongside establishing the potential for conflict, polarization has encouraged federal policy designs that have actually increased the potential for bi-partisan cooperation between state and federal agents in spite of polarization. I argue that, by encouraging the potential for challenges from partisan rivals at the state level, polarization has shifted patterns in federal decentralization of policy. Using data from 1953-2014 federal budgets I model the rate of federal funding decentralized to the states through grants on public opinion, the number of state institutions controlled by the congressional majority's party, and congressional polarization. The results support both explanations of patterns in decentralization found in the current literature. As public support for federal expansion increases, signaling a reduced potential for conflict due to variation in state constituent preferences organized by American federalism, national politicians are more likely to centralize governance and assign funding to national executive branches. In addition, national politicians will decentralize policy at higher rates when the control of state institutions by partisan allies signals a reduced potential for conflict due to partisan distinctions. However, increases in polarization amplify the impact of partisan control of state institutions on the allocation of federal funding to the states, shifting policy towards more partisan-focused decentralization and ignoring the potential for conflict associated with distinct local preferences. For bi-partisan policy implementation to occur, state politicians must confront conflicting electoral incentives due to identification with a national political party and distinct state preferences. By encouraging Congress to decentralize coercive policy to partisan allies, polarization increases the potential for conflict to occur within a single party due to the variation produced by American federalism.

Chapter 5 explores the implications of this combination by examining state response to federal preemption under polarization. Employing a unique data set that catalogues state

response to federal preemption laws adopted from 2005-2012, I find the presence of partisan allies in Washington does not have a statistically significant impact on state response to federal preemption. Instead, states are more likely to challenge federal law based on the degree of coercion applied by the law and the unique policy preferences within the state. The justifications for state legislation that negotiated and resisted federal preemption regularly focused on local constituent interests and the preservation of state power and control in the face of federal expansion.

While Chapters 3, 4, and 5 highlight the potential for bi-partisan engagement and the lack of partisan-oriented state resistance under polarization, Chapter 6 explores the impact of American federalism in shaping state response under highly polarized federal law by examining implementation of Medicaid Expansion under the Affordable Care Act. The decision from conservative Republican states like Ohio and Arizona to implement Medicaid expansion marked a strong deviation from the national partisan agenda. The *Negotiation Hypothesis* argues that when states that experience pressure to challenge federal law from only one of the two potential institutions, it creates cross-pressure. This can encourage states to negotiate policy implementation with partisan rivals in spite of national partisan polarization. Using a new measure of state level Medicaid Expansion, I find that state level partisan ideology is a strong predictor of state response, with more conservative ideologies corresponding to increased resistance to the liberal Democratic administration in Washington. Further, I argue that credible threats to partisan control and a stronger competitive partisan environment within a state can increase the salience of local concerns bringing them into competitive general election campaigns. I find that strong inter-party competition can mitigate the impact of more extreme



local ideologies, encouraging negotiation with the federal administration instead of outright resistance or cooperation.

### **Implications of the Institutional Approach to Federal-State Conflicts**

Taken as a whole, this project argues that bi-partisan policy implementation between state and federal agents is a direct product of polarization and occurs in spite of the increase in partisan division and patterns of obstruction and resistance at the national level. In doing so, this dissertation adopts a mildly optimistic attitude towards the role of federalism in advancing politics in the United States. Historically, federalism has been the rallying cry for those advocating the preservation of ascriptive traditions and policies that disproportionately burden women, minorities, and people of color (Robertson 2018). The current debates surrounding state prerogative, which include issues like abortion, transgender rights, voting rights, and social assistance programs, all contain voices that invoke the preservation of potentially unequal policies. Despite more than two hundred years of history, local constituent preferences still regularly advocate for the preservation of power by historically dominant groups and produce policies that disproportionately impact minority groups in uneven ways (Michener 2018; Soss, Fording, and Schram 2008). This dissertation does nothing to challenge this narrative and instead remains agnostic to the content of local preferences beyond their contradiction with national partisan agendas.

What this dissertation does explore is the potential role that federalism plays in producing bi-partisan policy implementation and continued governance in spite of polarization at the national level. Increasing national polarization has become a major concern for governance in the United States as gridlock and partisan resistance make it more difficult for Washington to respond to national public concerns (Mann and Ornstein 2012; Sinclair 2014). While state

politicians are increasingly pressured to pursue the national partisan agendas due to polarization, they also confront distinct constituent interests that are represented at the state level. I argue that bi-partisan cooperation is possible, and even likely, under polarization because the institutions of national political parties and American federalism can produce electoral incentives that encourage contrary approaches to national policy. The result is that state political parties can have preferences that are distinct and even at odds with their national partisan allies, especially for specific policies. The significant risk of loss of chamber control can make these local interests more salient for state partisans and encourage compromise and bi-partisan cooperation even in spite of more extreme state partisan ideologies.

This assertion is not entirely distinct from the claims made by Madison in the Federalists' papers. In Federalist 10, Madison argued that liberty and diversity of interest will inevitably spawn faction, as ambition encourages men to pursue their own interests at the expense of others. He claimed that the greatest risk to popular government occurs when the "public good is disregarded in conflict between rival parties" and decisions are produced by the "force of majority" (Madison, Hamilton, and Jay 1999, 45–46). Madison argued that the federation of the American Republic into so many equally sovereign states acted as a critical check on faction, writing "Extend the sphere and you take in a greater variety of parties and interests; you make it less probably that a majority of the whole will have a common motive to invade the rights of other citizens" (Madison, Hamilton, and Jay 1999, 51). Madison's claim applies to the composition of political parties as well. The diversity of interests under a specific partisan label can create tensions that can encourage bi-partisan compromise and cooperation with national rival partisans.

While this dissertation has explored the potential for conflict and compromise between rival partisans at the state and federal level, there are a number of changing political factors that can alter this potential. The most notable of this is the potential for national polarization to override local preferences. The coat-tails effects of national politicians are well documented, with state politicians often being held accountable to national partisan performance, independent of state-level policy successes (Rogers 2016). However, the increasing emphasis on national partisan politics within the American states has extended beyond coattails. Scholars have illustrated the important role national funding sources have played in shaping state politics and successful state campaigns (Hogan 2001). In addition to national donors, federated policy organizations and think tanks, like the conservative American Legislative Exchange Council have expanded the policy development resources available to state politicians in ways that have increased the consistency of policy alternatives between states (Hertel-Fernandez, Skocpol, and Lynch 2016). These organizations have worked in tandem with partisan oriented media outlets to further pressure states into adopting the national partisan agenda. Finally, scholars have shown that voter preferences have increasingly nationalized, exhibiting less variation between states and increasingly adopting the policy stances of their national party (Hopkins 2018; Lenz 2009).

All of these factors encourage the thickening of the relationship between national and state partisans regarding core policy goals and partisan ideology. Alongside this thickening the nationalization of the electorate in the states has shifted voter attention away from local concerns and towards national politics. The result may be the eclipsing of local concerns in favor of polarized partisan stances and the increase in state resistance along partisan lines. The highly polarized politics of the Affordable Care Act was not entirely immune to these forces. The polarization of Kentucky political parties and the shift towards outright resistance by the

Republican Party in the states was echoed in states like Louisiana and Arkansas, where moderate state politicians were replaced with more conservative candidates willing to toe the partisan line. If all politics is no longer local, then we may see a shift away from this potential for bi-partisan engagement and the exacerbation of polarization in the United States.

While addressing this potential shift is beyond the scope of this dissertation, there is some preliminary evidence that the representational concerns associated with state governments under American federalism may continue to function in spite of this thickening. Chapter 5 and 6 provide evidence that, in spite of polarization broadly and even polarization along a specific policy, local concerns can encourage contradictions with national partisan goals and produce avenues for bi-partisanship. With the case of Medicaid expansion, these exceptional cases proved critical for understanding the durability of policy. Further, while voters and national donors may be polarizing alongside national political parties, local businesses, resources, and organizations can continue to pressure state politicians to act on behalf of local concerns. In the end, if all politics is no longer local, we may be able to settle for the fact that some politics is local and that can still hold serious implications for policy implementation and bi-partisanship.

Alongside the potential thickening of state and federal partisan ties, this dissertation is agnostic to a number of other factors that may influence the potential for bi-partisan implementation. First and foremost, a great deal of federalism occurs independent of partisan politics within the bureaucracies at the state and federal level. Bureaucratic engagement can provide a non-partisan avenue for policy engagement that can continue to function in spite of the polarization of electoral politics. In addition to the bureaucracy, the federal courts loom large in their absence. By focusing on the origins of conflict between elected officials, instead of the resolution of conflict and the resulting distribution of power, I hoped to avoid the complex role

of the courts in shaping state-federal conflict. As the sole arbiter of conflicts between state and federal agents, the federal courts can effectively block or encourage state challenges to federal policy. The potential for success in the courts may prove a critical, though difficult to measure, factor in state decision-making regarding challenges to federal policy. Finally, while this dissertation focuses on the aggregation of interests at the state level and the representational function of state politicians, American federalism extends beyond the two layers into county and local politics. The growth of the sanctuary city debate has illustrated the potential for these partisan conflicts to extend into politics beyond the state level.

While these concerns represent significant limitations to the explanation presented here, there are a number of avenues for expanding this analysis, particularly into other critical policy arenas, in order to develop a fuller picture of the potential for bi-partisan engagement within the ranks of elected partisan officials. Current conflicts in between state and national agents suggest a number of fruitful avenues of research. First, conflict over Obama's Clean Power initiative and the Trump Administration's removal of those regulations has produced disparate patterns in state response, occasionally independent of partisan control of state institutions (Cama 2015; Plumer 2017; Valdmanis 2017). The Trump Administration has also introduced additional potential for resistance between levels of government, particularly at the local level. The current debates between the Trump Administration and the self-proclaimed sanctuary cities that have passed legislation to limit the Department of Homeland Security's attempted crack down on undocumented immigrants suggests an alternative source of conflict (Kasakove 2018; Levin 2017). Organized state resistance to other major national legislation including the REAL ID Act and the No Child Left Behind Act would provide additional cases to better examine patterns in state resistance.

Beyond examining patterns in state and federal conflict, the failure to repeal the ACA suggests that bipartisan engagement can also have a significant impact on policy durability. The decision by state agents to pursue implementation of a controversial federal policy shifted the electoral incentives of the members of Congress from those states. Ultimately, this shift found traction in the United States Senate, where Republican politicians from Medicaid adopting states felt significant pressure to preserve funding for the expansion. The conflict between the partisan agenda of repeal and the preservation of benefits that aided local constituents has doomed the repeal for the foreseeable future. Further research should explore the potential for state decisions to adopt or resist federal policy to impact policy durability beyond the highly polarized Affordable Care Act.

Finally, while this dissertation is optimistic regarding the potential for federalism to impact partisan polarization and policy durability, reality indicates that this optimism should be well guarded. As Chapter 6 illustrates, the ability for federalism and distinct local agendas to challenge partisan polarization in part hinges on the role of electoral competition within the state. While strong inter-partisan competition for control of state governments can encourage polarization (Lee 2016), it can also make the preferences and demands of local constituents more credible. The result is that state level polarization may still be occurring but the policies which state parties employ to distinguish themselves may vary between states, with local concerns shifting the priorities of state politicians in critical ways. However, partisan competition in state legislative elections remains consistently low. In 2016, only 58% of state legislative candidates confronted a major party challenger in the general election. For the twenty-six states where filing deadlines have passed, roughly 33% of state legislative candidates will not confront a general election challenger in 2018 (Ballotpedia.org 2018). This low level of partisan competition for

state political institutions reduces the likelihood that politicians will be willing to challenge the partisan agenda of national allies and cooperate in bi-partisan implementation of policy due to strong local pressure.

Scholarship on national partisan polarization has challenged the role of redistricting and gerrymandering in reducing competition and ultimately producing partisan polarization, with scholarship falling on both sides of the debate (Carson et al. 2007; McCarty, Poole, and Rosenthal 2009). Investigations at the state level have reiterated the muddled role of redistricting on within-state partisan polarization and competition (Greenblatt 2016; Masket, Winburn, and Wright 2012). While these studies evaluate the role of redistricting on competition and polarization at each level, this dissertation suggests a potential alternative dynamic. The low levels of within-state partisan competition, while not necessarily directly contributing to polarization within the state, may be disrupting the potential salutary effects of American federalism and the ability to produce bi-partisan governance in a polarized era.

In spite of these limitations, this dissertation provides evidence that bi-partisan policy implementation between state and federal politicians may be possible and even likely during periods of partisan polarization. The potential for this compromise is rooted the conflict between local concerns, represented in state governments under the institution of American federalism, and the agendas of national political parties, which bridge politicians across states under a common label. When American federalism and national political parties structure electoral motivations in ways that are congruent, state politicians will be encouraged to adopt the stance of the national political parties and polarize around issues. However, when the electoral incentives of American federalism and national political parties encourage conflicting policies, then state politicians may attempt to meet somewhere in the middle by negotiating policy implementation

with partisan rivals. Chapter 3 and 4 highlight how polarization at the national level has increased the likelihood of this conflict by encouraging increasingly coercive policies that are regularly decentralized to state partisan allies. Chapter 5 and 6 explore the reality of this conflict in the American states by highlighting bi-partisanship more broadly and even within a highly polarized policy like the Affordable Care Act. Thus, while polarization at the national level has produced increased partisan-driven resistance and obstruction, the policies produced under polarization can still produce the bi-partisan implementation across levels of government that is necessary for continued and effective governance in response to changing public demands.



## APPENDIX A

### POLARIZATION AND THE DECENTRALIZATION OF REDISTRIBUTIVE POLICY

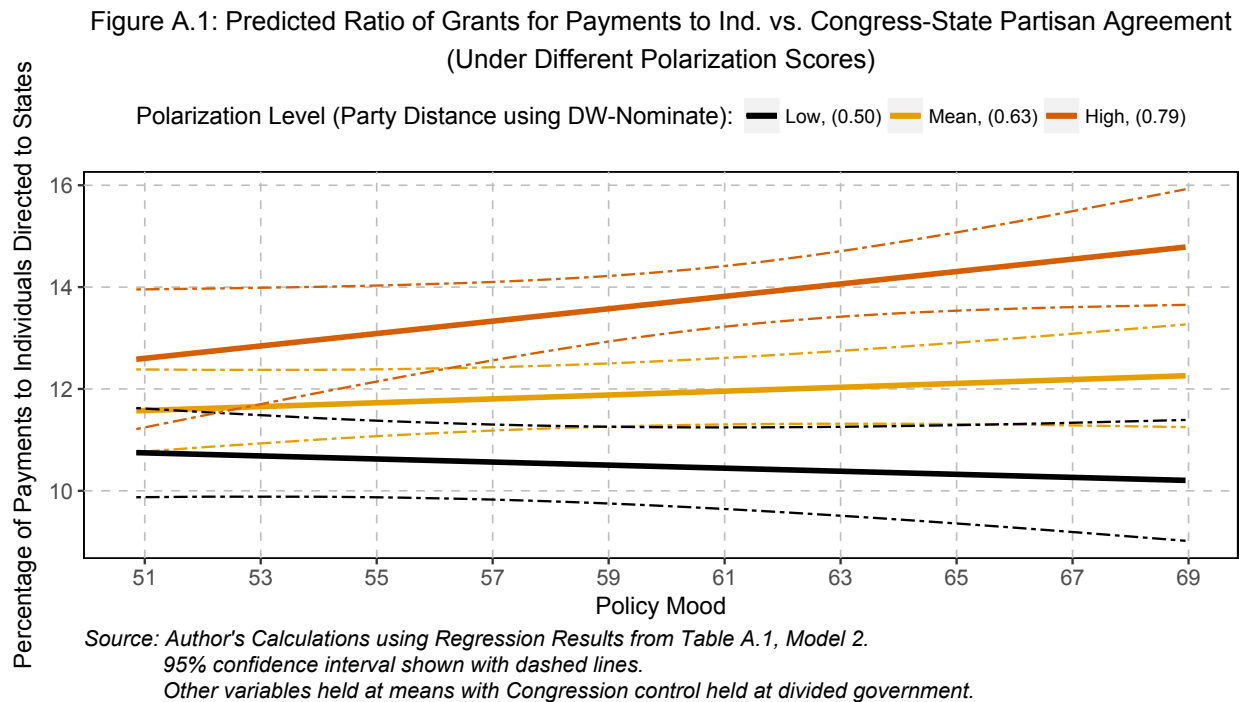
In order to better capture variation in patterns in decentralization as a product of changing public opinion and shifts in partisan control of state institutions, I separated defense spending and payments to individuals from my original measure. Defense spending was separated due to the potential for spending changes to shift alongside to international conflicts and as a product of Cold War spending. However, payments to individuals, including Social Security and Medicare spending, may be driven by demographic and economic shifts. Further, fiscal federalism argues that redistributive spending on individuals ought to be centralized in the national government due to the high cost and expansive tax base required to fund these projects. The result is that we might expect significant differences between spending on individuals and spending on infrastructure projects and economic development. This difference was born out in the data. The percentage of payments to individuals directed to state agents and the proportion of non-defense general spending directed to state agents are actually inversely correlated with a correlation coefficient of -0.46 ( $p < 0.0002$ ). Further, the comparable model results are strikingly different, as notes in Table A.1 below:

**Table A.1: OLS Model for the Ratio of Federal Spending Allotted to the States through Grants, General Spending and Payments to Individuals**

	Model 1: General Spending	Model 2: Individuals
Intercept	2.41 (1.01)*	16.95 (0.51)*
Policy Mood (Lagged 1 year)	-0.25 (0.07)*	0.04 (0.03)
Polarization (DW Nominate Party Difference)	-0.82 (2.43)	11.64 (1.18)*
Divided Legislature	5.67 (1.31)*	-4.99 (0.62)*
Democratic 2 Chamber Control	7.45 (1.49)*	-3.52 (0.54)*
Unified Government (With President)	1.17 (1.03)	-0.14 (0.39)
% State Institutions Controlled by Partisan Allies	0.14 (0.06)*	-0.07 (0.02)*
Policy Mood * Polarization	0.59 (0.41)	0.52 (0.2)*
% State Institutions * Polarization	0.76 (0.27)*	-0.09 (0.09)
Adjusted R-Squared	0.43	0.88
Years (N)	1953-2014	1953-2014
Note: Table entries are OLS regression coefficients, Newey-West HAC corrected estimated standard errors in parentheses, *p<.05 two-tailed		

In comparison to the original model, or Model 1, the model explaining payments to individuals tells a different story that runs counter to existing explanations for patterns in decentralization. While the coefficient for policy mood is not statistically significant, the coefficient on shared partisan control is the opposite of the expectation. A one standard deviation increase in shared partisan control results in a decline in grants by one-half percent. In other words, as the ratio of states under the control of partisan allies increases, there is a corresponding decline in grants allocated to state agents. The effects of polarization again illustrate a reverse of the situation with general spending. Unlike Model 1, polarization alone has a significant association with a single standard deviation increase in polarization (0.17) corresponding to a 2% increase in the use of grants for payments to individuals. Further, increases in polarization correspond to an increase in the impact of public opinion, resulting in a statistically significant

relationship at high levels of polarization. Figure A.1 shows the changing impact of policy mood on the allocation of payments to individuals under different polarization scenarios.



As the figure illustrates, an increase in polarization corresponds to an increase the impact of policy mood, though in an unexpected direction. An increase in support for the nationalization of policies corresponding to an increase in grants under high levels of polarization. At a polarization level of 0.79, the third quartile mark, a one standard deviation increase in policy mood corresponds to an increase in grants for payments to individuals by almost 0.4%. Thus, under polarized conditions, as support for federal involvement increases, there is a corresponding increase in the number of grants for payments to individuals, while the impact of shared partisan institutions is negligible.

The significant variation in results between the two policy types illustrates the importance of distinguishing policy arenas. The relatively small coefficients for payments to individuals are a result of spending being driven by demographic shifts and restricted to national

implementation, especially spending on Social Security and Medicare which accounts for roughly 57% of all 2014 payments to individuals. Further, the monotonic increase of polarization through time proves especially problematic as there has been a corresponding increase on the demands placed on Social Security due to generational change. Beyond Social Security, funding for health (Medicaid) and income security constitute roughly 35% of the total 2014 payments to individuals and represent flexible spending arenas which Congress can alter to respond to popular demand. However, these arenas are historically heavily controlled by the states, protected by historical precedent and constitutional provision, with 50% of funding going to the states in 2014. The results show that variation in the allocation of grants to the states for payments to individuals is fundamentally different than general spending and driven by factors other than public support for national government or partisan institutional control of state government.

## APPENDIX B

### CODING STATE-LEVEL RESPONSE TO MEDICAID EXPANSION

I coded the implementation index using a variety of indicators of cooperation, negotiation and resistance. States begin at a baseline of 0 every year and are allotted points towards either cooperation (positive points) or resistance (negative points) based on their actions that year. Point amounts weighted based on a few factors. First, actions that challenge the law more broadly (i.e. legal challenges that would block implementation nationally) are weighted higher than actions that block the law in the state. Secondly, actual expansion is weighted at 20 points in order to ensure that no state that actually expanded Medicaid would receive a negative score due to other state-level actions. The coding scheme for actions with sources is listed below.

*Expansion action:* Whether or not the state actively expanded Medicaid either under legislative or gubernatorial action. (Where the states stand on Medicaid expansion 2016)  
+ 20 points

*Early action:* Whether or not the state actively expanded Medicaid either under legislative or gubernatorial action prior to 2014 using a Medicaid Waiver or through the early action program. (States Getting a Jump Start on Health Reform's Medicaid Expansion 2012)  
+ 20 points

*Expansion delay:* States were penalized for delaying action on Medicaid expansion past the 2014 start. (Where the states stand on Medicaid expansion 2016)  
-3 per year delayed

*Waiver expansion:* States that opted to expand Medicaid under a Section 1115 demonstration waiver received a lower index score to bring them closer to Negotiated status. (Rudowitz and Musumeci 2015)  
-10 points (2014-2015 only)

*Litigation participation:* Participation in either National Federation of Independent Business v. Sebelius (2010-2013) or King v. Burwell (2014-2015) through either joining in the challenge or writing in support of the challenge. (Musumeci 2015; States' Positions in the Affordable Care Act Case at the Supreme Court 2012)  
. +/- 5 points

*Planning grants:* Planning grants for implementing insurance markets/exchanges. While planning grants are primarily designed to encourage state construction of insurance exchanges, they are used as a metric for ACA support following the examples of other scholars in the field (L. R. Jacobs and Callaghan 2013) (Creating a New Competitive Health Insurance Marketplace n.d.; States Leading the Way on Implementation: HHS Awards “Early Innovator” Grants to Seven States n.d.)

+1/Planning, +2/Level 1, +2/Level 2,+5 Early innovator grants

*Returned Grants:* Many states returned grant money later as a protest to the new law. This not only delayed implementation but also prevented other states from receiving the funding. (Cauchi 2016)

-2/Planning, -4/Level 1, -6/Level 2,-5 Early innovator grants

*State legislation:* The National Conference on State Legislatures has maintained a state health reform database from 2011-2015. NCSL conveniently categorizes legislation into a number of useful categories. Only adopted laws were considered and categorized into three groups:

*Authorize/Plan/Fund legislation:* +1/adopted law (Health Innovations State Law Database 2016; Health Reform 2011-13 State Legislation Database 2014; Healthcare Reform - 2014 Legislative Database 2015)

*Delay legislation:* (Funding restrictions, Reservation of legislative power, healthcare compacts, grant return legislation): -2/Adopted law (Cauchi 2016)

*Rejection legislation:* (Constitutional challenges, Litigation advocacy, Calls for repeal): -5/Adopted Law (Cauchi 2016)

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